

9-20-2011

Johnson v. State Clerk's Record v. 4 Dckt. 38769

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Vol. 4 of 9
IN THE SUPREME COURT OF THE STATE OF IDAHO

SARAH M. JOHNSON,

Petitioner/Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court No.

38769-2011

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RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE G. RICHARD BEVAN, DISTRICT JUDGE

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VOLUME 4 of 7

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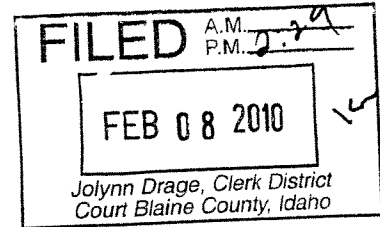
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SARAH JOHNSON

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

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Case No. CV-06-324

**MEMORANDUM IN SUPPORT
OF RESPONDENT'S MOTION
FOR SUMMARY DISMISSAL
OF PETITIONER'S SECOND
AMENDED PETITION FOR
POST-CONVICITON RELIEF**

COMES NOW the State of Idaho, by and through its counsel acting as Special Prosecuting Attorneys for Blaine County, and hereby submits this brief in support of the state's motion for summary dismissal of Petitioner's ("Johnson") petition for post-conviction relief pursuant to Idaho Code § 19-4906(c).

I.

Factual And Procedural History

The state charged Johnson with, and a jury convicted her of, two counts of first-degree murder for murdering her parents, Alan and Diane, early in the morning on

September 2, 2003. (R., Vol. 1, pp.34-36; Vol. 2, pp.248-50, 261-62, Vol. 5, pp.887-90.) Johnson murdered her mother by shooting her in the head with a high-powered rifle while she was asleep in bed. (Tr., Vol. III, p.1666, L.16 – p.1668, L.7; p. 1710, Ls.5-16; p.1792, L.13 – p.1795, L.13; Vol. IV, p.2308, L.21 – p.2317, L.5; p.2512, L.12 – p.2513, L.25 ; Vol. VI, p.4099, L.14 – p.4144, L.20; p.4164, Ls.17-24; p.4177, L.10 – p.4192, L.12.)¹ Johnson then shot her father as he was getting out of the shower; Alan lived long enough to make it to the master bedroom where he died and his body was ultimately found. (Tr., Vol. III, p.1657, L.13 – p.1663, L.17; p.1791, L.7 – p.1792, L.12; Vol.IV, p.2291, L.13 – p.2304, L.24; p.2514, L.1 – p.2515, L.15; Vol. VI, p.4144, L.2 – p.4177, L.10.) The evidence of Johnson's guilt was overwhelming.

Johnson was angry with her parents because they disapproved of her relationship with Bruno Santos, a nineteen-year-old illegal immigrant, who they planned on reporting to law enforcement the day they were murdered. (Tr., Vol. IV, p.2505, L.14 – p.2509, L.6; Vol. V, p.3337, Ls.7-18; p.3342, L.13 – p.3343, L.6; p.3345, Ls.4-18; p.3357, L.15 – p.3359, L.6.) Shortly after the murders, Johnson fled to a neighbor's house, where she reported that both her parents had been shot. (Tr., Vol. III, p.1512, L.8 – p.1519, L.5; p.1554, L.5 – p.1555, L.25; p.1583, L.18 – p.1586, L.10.) Although Johnson denied any involvement, she gave several different accounts of what she allegedly was doing, what she saw, and what she heard just prior to and after the murders. Johnson initially claimed she heard a gunshot while she was in her room asleep, that she sat up in bed, then heard a second shot, went to her parents' bedroom door, called for her mother, then fled the

¹ On March 16, 2009, Johnson filed a motion to take judicial notice of the pleadings, physical evidence admitted at trial, the Clerk's Record and transcripts prepared for appeal. (Motion to Take Judicial Notice of Court Files.) Although it appears that motion may still be pending, the state will refer to those items in this memorandum.

house. (Tr., Vol. III, p.1519, L.6 – p.1521, L.7; p.1558, Ls.3-19.) She stated she had not seen anything, however. (Tr., Vol. III, p.1521, Ls.3-7.) The second time she told the story, shortly thereafter, her report differed: she stated she heard her father in the shower before the shots. (Tr., Vol. III, p.1528, Ls.3-18.) (See also Tr., Vol. VI, p.3696, L.6 – p.3701, L.15; p.3739, L.24 – p.3742, L.22 (another version of events told by Johnson).)

Upon being asked the first time by police what had happened, just a few minutes later, she tried to reconcile these statements, stating that her father starting the shower initially woke her up, but she went back to sleep and was re-awakened again by the first shot. (Tr., Vol. III, p.1811, L.21 – p.1813, L.6; p. 2099, L.17 – p.2103, L.21.) In this statement she also for the first time claimed she had opened the door of the master bedroom before fleeing the house. (Tr., Vol. III, p.1850, Ls.1-23.) She later told a friend that she had immediately fled the house upon hearing the shots. (Tr., Vol. V, p.3297, L.22 – p.3298, L.22.) She told this friend's mother that, after hearing a shot and going to her parent's closed bedroom door, she heard arguing, called out to her mother, and then fled the house. (Tr., Vol. VI, p.3529, L.10 – p.3530, L.15.) (See also Tr., Vol. III, p.2106, L.7 – p.2112, L.23 (version of events Johnson gave police a few hours later).) Later that day, Johnson told her brother that she woke up upon hearing the first shot, went to her parents' closed door and called out for them, then heard the second shot and fled the house. (Tr., Vol. VII, p.4545, L.16 – p.4548, L.12.)

Johnson was interviewed again the day after the murders. (Tr., Vol. IV, p.2424, L.16 – p.2426, L.7.) She stated she woke up when she heard the shower come on, and then a few minutes later heard a shot. (Tr., Vol. IV, p.2426, L.8 – p.2428, L.4.) She got out of bed, went through her bathroom into the guest bedroom, out into the hall, and to the door of the master bedroom. (Tr., Vol. IV, p.2428, L.5 – p.2429, L.9.) She stated her

bedroom door was either closed or open only a crack. (Tr., Vol. IV, p.2429, Ls.10-13.) In this interview, Johnson claimed she heard the second shot while standing outside the master bedroom door, but that the doors were open because her parents propped it open with a pillow, and Johnson again stated she did not see or hear anything indicating a struggle. (Tr., Vol. IV, p.2429, L.14 – p.2432, L.1.) About 25 days after the murders Sarah told another version of events. She told a relative that the first shot woke her up; she heard a second shot, ran to her parents' bedroom, and saw blood on the walls and floor. (Tr., Vol. VI, p.3684, L.22 – p.3690, L.12.)

Johnson's inconsistent statements regarding what she saw, did, and heard around the time of the murders were significant in relation to other evidence. For example, several of the people who saw Johnson the morning of the murders noted her hair and appearance were not consistent with her claim that she was asleep in bed when the murders occurred. (Tr., Vol. III, p.1545, L.20 – p.1547, L.18; p.1559, L.14 – p.1560, L.11; p.1818, L.19 – p.1819, L.19; p.2520, L.15 – p.2521, L.23.) Johnson's claim that her parents' bedroom door and her bedroom door had been closed was also inconsistent with the presence of Diane's blood and brain matter in Johnson's own bedroom across the hallway and part of Diane's skull being in the hallway outside the master bedroom. (Tr., Vol. III, p.1619, L.20 – p.1620, L.10; p.1637, Ls.5-15; p.1655, L.2 – p.1657, L.9; p.1868, Ls.2-18; p.2019, L.24 – p.2020, L.18; p.2020, L.24 – p.2022, L.3; p.2121, L.7 – p.2124, L.4; Vol. V, p.3122, L.11 – p.3123, L.20.) In addition, Diane's blood was found on the socks Johnson was wearing the morning of the murders. (Tr., Vol. III, p.1755, L.8 – p.1759, L.8; Vol. V, p.3120, L.21 – p.3122, L.13; p.3423, Ls.8-14; p.3475, L.19 – p.3476, L.3.) Johnson also had a bruise on her left shoulder that was consistent with a recent

impact, such as shotgun recoil.² (Tr., Vol. IV, p.2248, L.3 – p.2250, L.9; p.2317, L.6 – p.2318, L. 18.)

During the interview that took place the day after the murder, Johnson admitted owning a pink bathrobe (Tr., Vol. IV, p.2436, Ls.7-18), admitted that a right-handed leather glove found in the trash in her room belonged to her mother and was usually in the car (Tr., Vol. III, p.2036, L.1 – p.2037, L.6; Vol. IV, p.2436, L.19 – p.2437, L.1; Vol. VI, p.3596, L.20 – p.3598, L.1), and claimed there should not have been any bullets in her room (Tr., Vol. IV, p.2437, Ls.2-17). However, unspent cartridges of the type used in the murders were found in her bedroom. (Tr., Vol. III, p.2033, L.11 – p.2034, L.18.) On them was Diane's blood. (Tr., Vol. V, p.3122, L.11 – p.3123, L.24.) In addition, the police found the spent casings to rounds that killed Alan and Diane in the garage and the master bedroom (still in the rifle). (Tr., Vol. III, p.1840, L.15 – p.1842, L.12; p.1843, L.24 – p.944, L.15; p.1954, L.11 – p.1956, L.21; p.2051, L.3 – p.2053, L.8; Vol. V, p.2912, L.6 – p.2954, L.16.)

Also significant was evidence law enforcement found in a trash can set out on the street for collection the morning of the murders: one latex glove and one left-hand leather glove, which matched the glove found in Johnson's bedroom, wrapped in the pink bathrobe that belonged to Johnson. (Tr., Vol. III, p.1672, L.16 – p.1673, L.17; p.1826, L.16 – p.1832, L.14; p.1893, L.19 – p.1902, L.17; Vol. VI, p.4566, L.16 – p.4568, L.25.) Inside the robe were paint chips that matched paint on the shirt Johnson was wearing the morning of the murders. (Tr., Vol. III, p.1755, L.8 – p.1758, L.6; Vol. VI, p.3574, L.1 – p.3587, L.21.) Testing revealed Johnson's DNA was present inside the latex glove (Tr., Vol. V, p. 3106, L.5 – p.2114, L.1), and the robe itself tested positive for blood and DNA

² Johnson claimed the bruises came from falling and hitting a table at Santos' house when she stayed there two days before the murder. (Tr., Vol. IV, p.2444, Ls.7-15.)

from Diane (Tr., Vol. V, p.3114, L.2 – p.3117, L.11; p.3434, L.11 – p.3459, L.3; p.3473, L.13 – p.3475, L.2), DNA possibly from Alan (Tr., Vol. V, p.3434, L.11 – p.3459, L.3), gun shot residue (Tr., Vol. V, p.3229, L.15 – p.3238, L.20), and tissue from Diane (Tr., Vol. V, p.3446, L.19 - p.3448, L.18; p.3454, L.16 – p.3455, L.23). The blood on the robe was consistent with the shooter having worn it, backwards, during the shooting. (Tr., vol. VI, p.4194, L.5 – p.4211, L.21.)

With respect to Johnson's access to the murder weapon, the weapon had been hidden in a closet in the guesthouse. (Tr., Vol. IV, p.2418, L.8 – p.2419, L.22; p.2702, L.3 – p.2706, L.1.) Johnson had a key to the guesthouse and had been in there several times, including the days immediately preceding the murders. (Tr., Vol. III, p.2037, L.7 – p.2038, L.6; Vol. IV, p.2257, L.7 – p.2258, L.10; p.2437, L.18 – p.2439, L.23; p.2688, L.25 – p.2690, L.6; p.2715, L.12 – p.2716, L.6; Vol. V, p.3274, Ls.11-25; p.3285, L.6 – p.3293, L.7; p.3335, L.14 – p.3336, L.22.) The scope off the murder weapon was still in the guesthouse on the bed, and officers initially at the scene observed footprints in the dew on the lawn going to and from the Johnson home and the guesthouse, which was an apartment above the detached garage on the Johnson property. (Tr., Vol. III, p.1733, L.20 – p.1738, L.25, p.1842, L.8 – p.1843, L.3; p.2056, L.2 – p.2057, L.22; Vol. IV, p.2706, Ls.2-16, p.2685, L.12 – p.2686, L.25.) A nine-millimeter handgun magazine from the guesthouse was also found in Johnson's room. (Tr., Vol. III, p.2038, L.7 – p.2040, L.10.) A nine-millimeter handgun matching the magazine was in a gun safe in the guesthouse (Tr., Vol. III, L.7 – p.2062, L.12), and a .22 rifle from the guesthouse closet was also found in the garage (Tr., Vol. III, p.1728, L.20 – p.1731, L.20; p.2047, L.18 – p.2050, L.18; Vol. IV, p.2708, L.13 – p.2709, L.14). Johnson had asked her parents for a key to the family's gun safe two days before the murders. (Tr., Vol. V, p.3336, Ls.10-22.)

Following her convictions, Johnson filed a notice of appeal timely only from the amended judgment of conviction, which was amended solely to correct clerical errors. (See Register of Actions, Blaine County Case No. CR-2003-0018200, entries dated 6/30/2005 (Judgment of Conviction); 7/8/2005 (Amended Judgment); and 8/17/2005 (Notice of Appeal).) That appeal was dismissed and the Remittitur issued April 28, 2006.

On April 19, 2006, Johnson filed a "*pro se*"³ petition for post-conviction relief in which she alleged, among other claims, that her attorneys were ineffective for failing to file a timely notice of appeal. (Petition for Post-Conviction Relief, pp.3-5.) Johnson also filed a "*pro se*" Motion for Appointment of Counsel and a "*pro se*" Motion for Court to Rule on "Notice of Appeal" Issue and Suspend Remaining Post-Conviction Claims Pending Outcome of Direct Appeal. The state filed an Answer, an objection to Johnson's motion to suspend, and a motion for discovery requesting authorization to depose Johnson's two trial attorneys – Bobby Pangburn and Mark Rader.

The Court appointed counsel, and granted Johnson's request to reinstate her appellate rights and to stay the post-conviction case pending the outcome of her appeal. (Order on Motion for New Appeal Period and Motion to Stay, and Order on Motion to Seal Motions to Withdraw filed July 3, 2006.) On appeal, Johnson raised three issues: (1) the aiding and abetting instruction constructively amended the charging document and resulted in a fatal variance; (2) denial of the "constitutional right to a unanimous jury verdict because the district court did not instruct the jury it must unanimously agree on whether [she] actually killed [her parents] or whether she aided and abetted in the killing;" and (3) "her constitutional rights were violated when the district court failed to remove a certain

³ Although Johnson's pleadings, on their face, purport to be *pro se*, Johnson's petition was, in fact, prepared by the State Appellate Public Defender. (See Affidavit of Sara B. Thomas filed June 5, 2006.)

juror from the jury pool or obtain an unequivocal commitment that the juror would follow all of the court's instructions." State v. Johnson, 145 Idaho 970, 972, 188 P.3d 912, 914 (2008). The Idaho Supreme Court denied relief on all claims and affirmed Johnson's convictions. Id. The Remittitur issued July 18, 2008. Johnson filed a petition for writ of certiorari, which the United States Supreme Court denied on December 1, 2008.

On August 15, 2008, the Court issue an order lifting the stay and appointing new counsel to represent Johnson in these proceedings. Johnson thereafter filed an amended petition⁴ and various motions for discovery and expert assistance. The parties stipulated to depose Mr. Pangburn and Mr. Rader and the Court granted Johnson's request to depose Robert Kerchusky, a fingerprint consultant who testified for Johnson at trial, and Patrick Dunn, one of the defense investigators employed by Johnson's trial counsel, but denied her requests for expert assistance. The depositions of Mrs. Pangburn, Rader, Kerchusky and Dunn have all been completed.

On July 29, 2009, Johnson filed a motion for leave to file a second amended petition, to which the state objected. The Court granted Johnson's motion without prejudice to the state's ability to raise the objections and defenses set forth in the state's objection to the amendment. Johnson filed her Second Amended Petition for Post-Conviction Relief (hereinafter "Petition") on January 12, 2010. For the reasons set forth below, all the claims raised in Johnson's Petition should be summarily dismissed.

⁴ The state initially objected to Johnson's amended petition but withdrew its objections, without prejudice, and reserved the right to raise its defenses and objections to the claims in Johnson's amended petition in its motion for summary dismissal. (State's Withdrawal of Objections to First Amended Petition filed June 10, 2009.)

II.

This Court Should Summarily Dismiss All Claims Raised In Johnson's Petition

A. General Legal Standards Applicable To Petitions For Post-Conviction Relief And Motions For Summary Dismissal

An application for post-conviction relief initiates a proceeding which is civil in nature. State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); Clark v. State, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); Murray v. State, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App. 1992). An application for post-conviction relief must contain much more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). Martinez v. State, 126 Idaho 813, 816, 892 P.2d 488, 491 (Ct. App. 1995). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. Like a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; Russell v. State, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App. 1990). Further, the post-conviction petitioner must make factual allegations showing each essential element of the claim, and a showing of admissible evidence must support those factual allegations. Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); Drapeau v. State, 103 Idaho 612, 617, 651 P.2d 546, 651 (Ct. App. 1982); Stone v. State, 108 Idaho 822, 824, 702 P.2d 860, 862 (Ct. App. 1985).

Idaho Code Section 19-4906(c) authorizes summary disposition of an application for post-conviction relief. Summary dismissal of an application pursuant to I.C. § 19-4906 is the procedural equivalent of summary judgment under I.R.C.P. 56. State v.

LePage, 138 Idaho 803, 806, 69 P.3d 1064, 1067 (Ct. App. 2003). I.C. § 19-4906(c) provides:

The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact, which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a genuine issue of material fact is presented, an evidentiary hearing must be conducted. Gonzales v. State, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct. App. 1991); Hoover v. State, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct. App. 1988); Ramirez v. State, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct. App. 1987).

Conversely, the "application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal." Goodwin v. State, 138 Idaho 269, 272, 61 P.3d 626, 629 (Ct. App. 2002) *review denied* (2003); LePage, 138 Idaho at 807, 69 P.3d at 1068 (citing Roman 125 Idaho at 647, 873 P.2d at 901). Allegations affirmatively disproved by the record of the underlying criminal case may be summarily dismissed. Follinus v. State, 127 Idaho 897, 908 P.2d 590 (Ct. App. 1995) (Follinus's claim that his attorney had been ineffective in failing to obtain a *Franks* hearing to contest the veracity of statements by the search warrant affiant was properly summarily dismissed where the court found that trial counsel did obtain, in effect, a *Franks* hearing at the suppression hearing); Stone, 108 Idaho at 826, 702 P.2d at 864 (record of extradition proceedings disproved applicant's claim that he was denied right to counsel in those proceedings). Allegations are insufficient for the

grant of relief when they do not justify relief as a matter of law. Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975); Remington v. State, 127 Idaho 443, 446-47 901 P.2d 1344, 1347-48 (Ct. App. 1995); Dunlap v. State, 126 Idaho 901, 906, 894 P.2d 134, 139 (Ct. App. 1995) (police affidavit was sufficient to support issuance of search warrant, and defense attorney therefore was not deficient in failing to move to suppress evidence on the ground that warrant was illegally issued).

Bare or conclusory allegations, unsubstantiated by any fact, are inadequate to entitle a petitioner to an evidentiary hearing. Roman, 125 Idaho at 647, 873 P.2d at 901; Baruth v. Gardner, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986); Stone, 108 Idaho at 826, 702 P.2d at 864. If a petitioner fails to present evidence establishing an essential element on which he bears the burden of proof, summary dismissal is appropriate. Mata v. State, 124 Idaho 588, 592, 861 P.2d 1253, 1257 (Ct. App. 1993). Where petitioner's affidavits are based upon hearsay rather than personal knowledge, summary disposition without an evidentiary hearing is appropriate. Ivey v. State, 123 Idaho 77, 844 P.2d 706 (1993).

Application of the foregoing standards to each of Johnson's claims demonstrates she has failed to meet her burden of establishing she is entitled to an evidentiary hearing. As such, this Court should summarily dismiss Johnson's Petition.

B. Claim One – "Petitioner Is Innocent"

Johnson's first claim alleges she is innocent. (Petition, p.3, ¶ 10.) This claim should be dismissed as untimely and because it fails to state a cause of action.

A petitioner must file her post-conviction petition "within one (1) year from the expiration of the time for appeal" I.C. § 19-4902(a). An appeal must be filed within

42 days of entry of judgment. I.A.R. 14(a). Failure to file the petition within one year and forty-two days from entry of judgment is grounds for dismissal of the petition. Sayas v. State, 139 Idaho 957, 959, 99 P.3d 776, 778 (Ct. App. 2003). If a party subsequently amends the petition to assert a claim arising “out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” I.R.C.P. 15(c). “If, however, the amended pleading sets forth a new cause of action unrelated to the original transaction or occurrence pled, the amendment does not relate back to the date of the original pleading.” Idaho First Nat’l Bank v. Bliss Valley Foods, Inc., 121 Idaho 266, 281, 824 P.2d 841, 856 (1991) (citing Black Canyon Racquetball Club, Inc. v. Idaho First Nat’l Bank, 119 Idaho 171, 804 P.2d 900 (1991); Wing v. Martin, 107 Idaho 267, 688 P.2d 1172 (1984)).

In this case, judgment was entered on June 30, 2005, and, as previously noted, Johnson failed to file a timely appeal. Johnson’s actual innocence claim did not appear in her original petition; rather, she first alleged her claim of actual innocence in her first amended petition, which was not filed until March 16, 2009, nearly four years after judgment was entered. Thus, Johnson’s first claim is untimely unless she can demonstrate it relates back to her original petition – a burden she cannot meet because her alleged innocence does not arise “out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.”

Even if this Court concludes Johnson’s first claim is not untimely, it should be dismissed for failure to state a cause of action. Whether Johnson is guilty or innocent was decided at her criminal trial; she is not entitled to a new trial in post-conviction to determine this issue.

The scope of post-conviction relief is set forth in I.C. § 19-4901, which permits post-conviction claims on matters such as whether the constitution or laws of the state were violated in the conviction or sentence, whether the court in the criminal case had jurisdiction, and whether there is new evidence that requires a new trial. I.C. § 19-4901(a). Post-conviction proceedings are “not a substitute for” the original criminal proceedings. I.C. § 19-4901(b). Because Johnson’s guilt was adjudicated in the criminal trial, it is not a matter that may be re-litigated in post-conviction. On the contrary, Johnson must instead show she is entitled to a new trial based upon one of the grounds enumerated in section 19-4901.

Because Johnson’s first claim is untimely and because it fails to state a legitimate cause of action, it should be dismissed.

C. Claim Two – “Trial Court Lacked Jurisdiction To Try, Convict And Sentence Petitioner”

In her second claim, Johnson contends the trial court lacked jurisdiction over her criminal case because she was sixteen years old when she committed the murders and no waiver hearing occurred, which she asserts was required by I.C. § 20-508. (Petition, pp.3-4, ¶ 11.) Included in Johnson’s second claim is the assertion that trial counsel were ineffective for “failing to move for dismissal or otherwise raise this jurisdictional issue.” (Petition, p.4, ¶ 11.) This claim should be dismissed because it is untimely. Alternatively, Johnson’s jurisdictional argument fails as a matter of law; consequently, her ineffective assistance of counsel claim necessarily fails as well.

As with Johnson’s first claim – actual innocence – her jurisdictional claim was not raised until she filed her first amended petition nearly four years after judgment was entered. Thus, Johnson’s second claim is untimely. Further, Johnson’s second claim

does not arise “out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.” The claim should therefore be dismissed as untimely.

Even if not dismissed as untimely, Johnson's second claim should be dismissed because the claim is frivolous as a matter of law. The Juvenile Corrections Act provides, in relevant part: “Any juvenile, age fourteen (14) years to age eighteen (18) years, who is alleged to have committed any of the following crimes ... (a) Murder of any degree ... **shall** be charged, arrested and proceeded against by complaint, indictment or information as an adult.” I.C. § 20-509(1) (emphasis added). Johnson was charged, at age 16, with a double homicide. The claim that the district court lacked jurisdiction over her because there was no waiver hearing is frivolous.

Because Johnson's second claim is untimely and fails as a matter of law, it should be dismissed.

D. Claim Three – “Violation Of Petitioner's Right To Due Process Of Law”

In claim three, Johnson alleges “it is believed, the District Court Judge reviewed transcripts of the Grand Jury proceedings, reviewed police reports and conducted an independent investigation into the facts of the homicides” (Petition, p.4, ¶ 12.) According to Johnson, this constituted an “independent investigation” that “compromised” the judge's “responsibility as a neutral and detached arbiter of the proceedings,” and “create[s] at least an appearance that [the judge may have] consider[ed] facts not admitted into evidence and of an unfair trial.” (Petition, pp.4-5, ¶ 12.) In support of this assertion, Johnson contends the trial judge's “bias is highlighted in [his] recitation of ‘facts’ allegedly supporting submission to the jury of an aiding and abetting instruction, wherein [the judge] recites facts not in evidence, and reaches

conclusion [sic] not supported by evidentiary facts.” (Petition, p.5, ¶ 12.) Johnson also claims the judge “betray[ed] his bias against [her], and consideration of facts not in evidence, during argument on Defendant’s Motion for Acquittal under Rule 29, when [he] stated:”

“And what’s **always** occurred to me in this case is, well, by the evidence presented, did the defendant commit these crimes by herself, or did the defendant have some help,” and “The circumstantial evidence in this case is as strong as a 40 acre field of garlic in full bloom . . .,” and “. . . and there’s no evidence that excludes the defendant. There is not one piece of evidence that excludes the defendant from the commission of this crime . . .” (See Supp. Transcript Pgs. 447, 448 & 450; Affidavits of Rader & Dunn, Exhibits 1 & 2) Further indicating a pre-determination or consideration of facts not in evidence was His Honor’s comment concerning Petitioner’s inability to maintain her composure during trial, “. . . there are other family members, as I understand it, present who are not conducting themselves in that fashion.” (See Transcript Pg 1997).

(Petition, p.5, ¶ 12 (emphasis original).)

Johnson also contends in relation to these allegations that trial counsel were ineffective “in failing to move for disqualification for cause of Judge Woods [sic], . . . based on the facts stated above” and that, had counsel done so, “there is reasonable probability that the outcome of the trial court proceeding would have been different.” (Petition, pp.5-6, ¶ 12.) Additionally, Johnson alleges the trial court deprived her of her Sixth Amendment right to “confront adverse witnesses” by “impermissibly limit[ing] [her] right to effectively cross-examine Bruno Santos by prohibiting questioning in regard to matters of impeachment, including the right to expose [his] possible bias and motive for testifying . . .” (Petition, p.6.) Johnson has failed to establish she is entitled to an evidentiary hearing on any of the allegations alleged in claim three.

1. Judicial Bias

To the extent Johnson's third claim asserts a freestanding claim of judicial bias, such a claim is barred from consideration in post-conviction because it could have been raised on direct appeal. Idaho Code § 19-4901(b) states:

Any issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings, unless it appears to the court on the basis of a substantial factual showing by affidavit, deposition or otherwise, that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt and could not, in the exercise of due diligence, have been presented earlier.

Johnson's bias claim is based on statements the court made during and after trial. These statements were clearly known when Johnson filed her direct appeal and could have been raised as an issue as appeal. Moreover, Johnson has not alleged, nor could she establish, "that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt," by the jury, or that this claim "could not, in the exercise of due diligence, have been presented earlier." This portion of Johnson's third claim should therefore be dismissed pursuant to I.C. § 19-4901(b).

2. Ineffective Assistance Of Counsel For Failing To File A Motion To Disqualify

With respect to Johnson's assertion that counsel were ineffective for failing to file a motion to disqualify Judge Wood based on his alleged bias, Johnson has failed to allege a *prima facie* case that counsels' failure to file such a motion was deficient performance, much less that she was prejudiced as a result. In order to survive summary dismissal of a claim alleging ineffective assistance of counsel, Johnson "must establish that: (1) a material issue of fact exists as to whether counsel's performance was deficient; and (2) a material issue of fact exists as to whether the deficiency prejudiced the claimant's case." Schoger v. State, --- P.3d ---, 2010 WL 337688 *2

(2010) (citing Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Baldwin v. State, 145 Idaho 148, 153, 177 P.3d 363, 367 (2008). "To establish deficient assistance, the claimant has the burden of showing that her attorney's conduct fell below an objective standard of reasonableness." Schoger at *2 (citing Baldwin, 145 Idaho at 153, 177 P.3d at 367). "This objective standard embraces a strong presumption that the claimant's counsel was competent and diligent. More simply put, the standard for evaluating attorney performance is objective reasonableness under prevailing professional norms." Schoger, at *2 (citing State v. Mathews, 133 Idaho 300, 306, 986 P.2d 323, 329 (1999)). To establish prejudice, Johnson "must show a reasonable probability that but for her attorney's deficient performance the outcome of the proceeding would have been different." Schoger at *2 (citing Baldwin, 145 Idaho at 153, 177 P.3d at 367). "Where the alleged deficiency is counsel's failure to file or pursue certain motions, a conclusion that the motion, if pursued, would not have been granted, is generally determinative of both prongs of the *Strickland* test." Schoger at *8 (quoting State v. Hairston, 133 Idaho 496, 512, 988 P.2d 1170, 1186 (1999)).

Counsels' failure to file a motion to disqualify Judge Wood based on his alleged basis was neither deficient nor prejudicial because, "if pursued, [the motion] would not have been granted." A district court's decision regarding a party's motion to disqualify for bias is discretionary. Bell v. Bell, 122 Idaho 520, 529, 835 P.2d 1331, 1340 (Ct. App. 1992). "Bias, in order to be a ground for disqualification, must stem from the judge forming an opinion on the merits of the case on some basis other than what has been learned from presiding over the case." Liebelt v. Liebelt, 125 Idaho 302, 306, 870 P.2d 9, 13 (Ct. App. 1994) (citing United States v. Grinnell Corp., 384 U.S. 563 (1966); Rosen v. Sugarman, 357 F.2d 794 (2nd Cir. 1966)). In other words, "the alleged bias or

prejudice 'must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.'" Hays v. Craven, 131 Idaho 761, 763, 963 P.2d 1198, 1200 (Ct. App. 1998) (quoting Desfosses v. Desfosses, 120 Idaho 27, 29, 813 P.2d 366, 368 (Ct. App. 1991)).

"[V]ague and factually unsubstantiated allegations are wholly insufficient to merit disqualification of the district court." Hays, 131 Idaho at 763, 963 P.2d at 1200. Moreover, "[a]dverse rulings alone do not support the existence of a disqualifying prejudice." Bell, 122 Idaho at 530, 835 P.2d at 1341 (citation omitted). As explained by the Idaho Supreme Court in State v. Pizzuto, 119 Idaho 742, 776, 810 P.2d 680, 714 (1991), *overruled on other grounds*, State v. Card, 121 Idaho 425, 825 P.2d 1081 (1991):

[A] judge may not be disqualified for prejudice unless it is shown that the prejudice is directed against the party and is of such nature and character as would render it improbable that under the circumstances the party could have a fair and impartial trial. In order to constitute legal bias or prejudice, allegations of prejudice in post-conviction and sentence reduction proceedings must state facts that do more than simply explain the course of events involved in a criminal trial. In Idaho a judge cannot be disqualified for actual prejudice unless it is shown that the prejudice is directed against the litigant and is of such a nature and character that it would make it impossible for the litigant to get a fair trial.

(Citations and quotations omitted).

The court in Pizzuto also noted: "[t]hat judges are capable of disregarding that which should be disregarded is a well accepted precept in our judicial system." 119 Idaho at 776-77, 810 P.2d at 714-15 (citation omitted, alteration in original). With respect to the parameters of motions to disqualify judges based upon bias and information gleaned from prior or other proceedings, the Idaho Supreme Court has further articulated the proper analysis as follows:

Every trial judge who rules upon a post conviction review proceeding or an I.C.R. 35 motion to reduce sentence will previously have prejudged the matter, often forming extremely strong opinions as to the sentence which should be imposed, and will no doubt be convinced that the procedure followed and the sentence imposed was correct, particularly where the trial court proceedings have been affirmed on appeal by this Court. It would be an unusual case in which a trial judge, when called upon to rule on an I.C.R. 35 motion to reduce sentence, would not approach the case on the basis that the sentence imposed was correct, and require the defendant to shoulder "the burden of showing that the original sentence was unduly severe." *State v. Martinez*, 113 Idaho 535, 536, 746 P.2d 994, 995 (1987). Coming to the case with that frame of mind does not constitute bias or prejudice within the meaning of I.C.R. 25 (b)(4) and does not require disqualification of the trial judge. . . . Accordingly, when a trial judge is called upon to rule upon a petition for post conviction relief, or a motion for reduction of sentence under I.C.R. 35, particularly in a case where the death penalty has been imposed, he comes to the case after having already formed strong opinions and beliefs regarding the atrocious nature of the crime, the unredeemable character of the defendant, and the need of society to impose this most serious of criminal penalties. A trial judge is not required to erase from his mind all that has gone before, and indeed, it is doubtful that any human being could. Rather, when faced with an I.C.R. 25(b)(4) motion to disqualify for bias and prejudice in a post conviction or I.C.R. 35 proceeding, the trial judge **need only conclude that he can properly perform the legal analysis** which the law requires of him, recognizing that he has already pre-judged the case and has formed strong and lasting opinions regarding the worth of the defendant and the sentence that ought to be imposed to punish the defendant and protect society.

State v. Beam, 115 Idaho 208, 215, 766 P.2d 678, 685 (1988) (emphasis added).

Johnson's assertions – that Judge Wood "reviewed transcripts of the Grand Jury proceedings, reviewed police reports and conducted an independent investigation into the facts of the homicides," gave an aiding and abetting instruction based on facts not in evidence, and revealed his bias by commenting on the strength of the state's case when ruling on Johnson's Rule 29 motion – do not establish bias or prejudice. Although Judge Wood acknowledges he read the Grand Jury transcript and certain police reports, he gave notice of his intent to do so and, in some instances, did so in conjunction with defense motions and at defense counsels' request. (Order De: Motion to Disqualify and

Motion for Order of Discovery filed April 16, 2009, pp.4-5.) Moreover, doing so does not constitute an improper *ex parte* communication, nor an independent investigation of the facts of the case. Rather, this information is the type of information gleaned from the Court's participation in the case, and is not extrajudicial in nature. See Liebelt, 125 Idaho at 306, 870 P.2d at 13; Hays, 131 Idaho at 763, 963 P.2d at 1200.

With respect to Johnson's claim that Judge Wood was biased because he allegedly "recite[d] facts not in evidence, and reache[d] conclusion[s] not supported by evidentiary facts," Johnson fails to identify what specific facts were "not in evidence" or which "conclusion[s] [were] not supported by evidentiary facts." Such "vague and factually unsubstantiated allegations" are not only inadequate to merit disqualification, Johnson's mere assertion that this occurred is bare and conclusory and unsubstantiated by any reference to the record or transcript.

Finally, Johnson's claim that Judge Wood was biased based on his assessment of the state's case in ruling on her motion for judgment of acquittal is without merit because it is entirely proper, and indeed necessary, for a judge considering a request for an acquittal to discuss the weight of the state's evidence. State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992) (In determining whether a defendant is entitled to a judgment of acquittal, a court must decide whether there was substantial evidence presented at trial upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.). Judge Wood's comments that the "circumstantial **evidence**" was "as strong as a 40-acre field of garlic in full bloom," and "there's no **evidence** that excludes the defendant," but rather the "**evidence** presented" supports the conclusion that Johnson "commit[ed] these crimes by herself," reflect a proper analysis of Johnson's request for an acquittal, and disproves her claim that

Judge Wood's comments "betray his bias . . . and consideration of facts not in **evidence.**" The fact that Judge Wood performed his duty as required by law "is hardly evidence that the judge was biased," much less that trial counsel should have moved to disqualify him. Martinez, 126 Idaho at 815, 892 P.2d at 490 (concluding that judge's performance of his obligations under I.C. § 19-2515 did not establish bias).

Further, in terms of prejudice, other than her assumption that her motion would have been granted and her bare and conclusory allegation that "there is [a] reasonable probability that the outcome of the trial court proceeding would have been different" (Petition, p.6, ¶ 12), Johnson has failed to articulate why Judge Wood's disqualification would have changed any of the evidence presented, any of the rulings made, or how a different judge would have otherwise affected the jury's guilty verdicts.

Johnson has failed to raise a genuine issue of material fact that counsel was ineffective for failing to file a motion to disqualify Judge Wood.

3. Interference With Right To Confront Adverse Witnesses

In the final portion of Johnson's third claim, she alleges the district court erred in imposing a "constitutional [sic] impermissible limitation" on her right to cross-examine Bruno Santos. (Petition, p.6, ¶ 14.) Like Johnson's first two claims, this claim was not raised until Johnson filed her amended petition. The claim is therefore untimely and because it does not relate back to her original petition, it should be dismissed on this basis.

Alternatively, this claim is barred by I.C. § 19-4901(b) because Johnson could have raised it on direct appeal and she has failed to show "that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt" or that the

claim "could not, in the exercise of due diligence, have been presented earlier." This portion of Johnson's third claim should therefore be dismissed.

Because Johnson has failed to raise a genuine issue of material fact in relation to any of her allegations in claim three, the claim should be dismissed.

E. Claim Four – "Ineffective Assistance Of Trial Counsel"

In claim four, Johnson contends trial counsel were ineffective in the following ways: (1) failing to move for a continuance after discovering "that a comforter, that would have contained physical evidence, had been discarded and not gathered as physical evidence" (Petition, pp.7-8, ¶ a); (2) failing to "object to the re-enactment proffered by the States' [sic] forensic expert Rod Englert, as without adequate foundation"⁵ (Petition, p.8, ¶ b); (3) failing to "adequately investigate the scientific basis of a proffered experiment and fail[ing] to adequately investigate the relevant evidence following the State's delayed disclosure" (Petition, p.8, ¶ c); (4) failing to "provide expert testimony as to comforters" (Petition, p.9, ¶ d); (5) failing to "adequately prepare and investigate and to cross-examine the State's witnesses for the relevance and accuracy of their testimony and or to make any effort to attack witness veracity, with factual inconsistencies from prior statements or testimony" (Petition, p.9, ¶ 16); and (6) failing to "elicit" testimony from the Johnsons' neighbors regarding what they saw or heard prior to the murders (Petition, pp.13-14, ¶ 17). Johnson has failed to establish she is entitled to an evidentiary hearing on any of these claims.

⁵ Paragraph (b) also contains an allegation that trial counsel were ineffective in failing to move for a continuance "based on the State's late disclosure of evidence." (Petition, p.8, ¶ b.) It is unclear how, if at all, this allegation is different than the same allegation contained in paragraph (a) or how it pertains to Johnson's claim in relation to Mr. Englert's testimony.

1. General Legal Standards Governing Ineffective Assistance Of Counsel Claims

As noted in Section D.2, *supra*, in order to survive summary dismissal of a claim alleging ineffective assistance of counsel, Johnson “must establish that: (1) a material issue of fact exists as to whether counsel's performance was deficient; and (2) a material issue of fact exists as to whether the deficiency prejudiced the claimant's case.” Schoger at *2. “Because of the distorting effects of hindsight in reconstructing the circumstances of counsel's challenged conduct, there is a strong presumption that counsel's performance was within the wide range of reasonable professional assistance -- that is, ‘sound trial strategy.’” Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989) (quoting Strickland, 466 U.S. at 689-90); Aragon v. State, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). A petitioner must overcome a strong presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment” to establish that counsel's performance was “outside the wide range of professionally competent assistance.” Claibourne v. Lewis, 64 F.3d 1373, 1377 (9th Cir.1995) (quoting, Strickland, 466 U.S. at 690). “Strategic and tactical decisions will not be second-guessed or serve as basis for post-conviction relief under a claim of ineffective assistance of counsel unless that decision is shown to have resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review.” State v. Osborne, 130 Idaho 365, 372-373. 941 P.2d 337, 344-345 (citing Giles v. State, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994); Gabourie v. State, 125 Idaho 254, 258, 869 P.2d 571, 575 (Ct.App. 1994)).

Thus, the first element – deficient performance – “requires a showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Strickland, 466 U.S. at 687. The second element – prejudice – requires a showing that counsel’s deficient performance actually had an adverse effect on his defense; *i.e.*, but for counsel’s deficient performance, there was a reasonable probability the outcome of the trial would have been different. Strickland, 466 U.S. at 693; Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999). Regarding the second element, Johnson has the burden of showing that her trial counsels’ deficient conduct “so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland, 466 U.S. at 686; Ivey v. State, 123 Idaho 77, 80, 844 P.2d 706, 709 (1992).

As explained in Ivey, 123 Idaho at 80, 844 P.2d at 709, “The constitutional requirement for effective assistance of counsel is not the key to the prison for a defendant who can dredge up a long series of examples of how the case might have been tried better.”

2. Failure To Move For A Continuance

Johnson contends counsel were deficient for failing to request a continuance after discovering that the comforter on the bed where Diane was murdered was not collected as evidence. (Petition, pp.7-8, ¶ 15.a.) According to Johnson, she was prejudiced by counsels’ failure to do so because it left counsel “inadequately prepared to cross-examine the State’s witnesses about the alleged comforter” and “[s]pecifically, whether a hole on the comforter was a bullet hole and whether a sheet and or comforter

covered the head of Diane Johnson thereby effecting blood spatter.” (Petition, p.8, ¶ 15.a.) These allegations fail to establish either deficient performance or prejudice.

Exactly how counsel could have been more prepared to cross-examine the state’s witnesses had he obtained a continuance is unclear. A continuance certainly would not change the unavailability of evidence that was not collected and requesting more time to prepare to cross-examine witnesses about evidence that did not exist would be of no benefit. Rather, under the circumstances, it was objectively reasonable for counsel to instead emphasize and capitalize on the state’s failure to collect the evidence. Johnson has failed to explain how a continuance would have better prepared counsel to ask the state’s witnesses “whether a hole on the comforter was a bullet hole and whether a sheet and or comforter covered the head of Diane Johnson.”

Johnson has likewise failed to establish a *prima facie* case that she was prejudiced by counsels’ failure to seek a continuance. There is no allegation what additional evidence could have been introduced had counsel requested more time or how there is a reasonable probability that such evidence would have changed the jury’s verdict.

Because Johnson has failed to raise a genuine issue of material fact that counsel was deficient for failing to request a continuance to become better prepared to address the absence of the comforter, or that she was prejudiced as a result, this claim should be summarily dismissed.

3. Failure To Object To The Re-Enactment Proffered By The State

Johnson alleges counsel should have also requested a continuance in order to provide more time to prepare so they could “discredit” the state’s expert forensic witness, Rod Englert. (Petition, p.8, ¶ 15.b.) Johnson further alleges, “[t]his allegation

. . . includes Trial Counsel's failure to object to the re-enactment proffered by . . . Rod Englert, as without adequate foundation" and as invading the province of the jury. (Id.) These allegations fail to establish either deficient performance or prejudice.

Again, it is unclear exactly how counsel could have been more prepared to cross-examine Mr. Englert had they requested a continuance as Johnson fails to articulate what additional investigation or preparation should have been performed. Counsel certainly did not need additional time in order to object to the re-enactment for lack of foundation or as improperly invading the province of the jury. Moreover, Johnson has failed to identify how the foundation for Mr. Englert's opinion was inadequate. She merely states that it was. Johnson has also failed to identify what improper opinion Mr. Englert gave or explain how it impermissibly invaded the province of the jury.⁶ Such bare and conclusory allegations are insufficient to establish a *prima facie* case of deficient performance.

Johnson has also failed to establish a genuine issue of material fact that she was prejudiced. Rather, she merely states had counsel "been able to discredit the expert forensic witness, [she] would not have been convicted." (Petition, p.8, ¶ 15.b.) Even assuming counsel could have prevented Mr. Englert's re-enactment by objecting, the jury would have still found Johnson guilty in light of all of the other evidence. Indeed, Mr. Englert's re-enactment and opinions did not specifically identify Johnson as the murderer; rather, they were general in nature. Given all of the evidence indicating

⁶ Although Johnson cites to one page of Mr. Englert's testimony, page 4204 (Petition, p.8, ¶ 14.b.), a review of that particular page reveals that although the prosecutor asked Mr. Englert, on that page, his opinion "as to how the blood of Alan and Diane Johnson ended up on the robe," Mr. Englert's opinion on that point does not appear on that page (see Tr., Vol. VI, p.4204).

Johnson was the murderer, there is no reasonable probability the jury would have concluded otherwise absent the re-enactment.

Because Johnson has failed to raise a genuine issue of material fact that counsel was deficient for failing to request a continuance and/or to “discredit” Mr. Englert or object to his re-enactment, this claim should be summarily dismissed.

4. Failure To Adequately Investigate Scientific Basis For Proffered Coconut Experiment

Johnson alleges counsel were ineffective because they were “inadequately prepared to present adequate support for [their] proffered expert testimony regarding the blood splattering evidence;” specifically, their “experiment using a coconut [to] re-create the alleged crime [sic – although Johnson maintains her innocence, she cannot legitimately contend no crime was committed].” (Petition, p.8, ¶ 15.c.) Johnson further asserts, as an “example,” “Trial Counsel was unable to consult with any experts and properly present an experiment that would have met evidentiary standards and would have been admissible . . .” (Id.) These allegations fail to establish either deficient performance or prejudice.

First, the notion that counsel were “unable to consult with any experts” is belied by the record. Counsel clearly had adequate time to consult with experts and, in fact, did so. Any request for additional time would have certainly been denied. Second, Johnson has failed to identify what additional experts should have been consulted or what their testimony would have been. Third, Johnson has failed to explain what additional foundation counsel should have presented in order to render the coconut experiment admissible. Simply stated, none of Johnson’s allegations are sufficient to create a genuine issue of material fact that her attorneys were deficient.

Johnson's allegations are also insufficient to establish a *prima facie* case of prejudice. Johnson only alleges, in conclusory fashion: "But for Trial Counsels' failure to adequately investigate and prepare, including but not limited to,^[7] researching relevant law on the issue of admissibility, there is a reasonable probability that Petitioner could have rebutted the State's claims regarding blood splatter evidence and would not have been convicted." (Petition, p.8, ¶ 15.c.) This assertion is bare and conclusory and is inadequate to raise a genuine issue of material fact regarding prejudice.

Because Johnson has failed to raise a genuine issue of material fact that her attorneys were ineffective in relation to the proposed coconut experiment or in failing to proffer some other unidentified experiment, this claim should be summarily dismissed.

5. "Failing To Provide Expert Testimony As To Comforters"

Johnson alleges counsel were ineffective in "failing to provide expert testimony as to comforters." (Petition, p.9, ¶ 15.d.) More specifically, Johnson asserts:

Trial Counsel requested the ability to provide evidence of a forensic experiment showing the effects of a contact gunshot from a high-powered rifle on a sheet and comforter at the proximity that the State asserted occurred in this case. The District Court denied Trial Counsel's request because Trial Counsel could not provide evidence that the comforter used in the experiment was the same type of comforter that the State destroyed. Trial Counsel was ineffective in failing to present to the District Court evidence showing that the type of comforter used in the experiment would not have made a difference to the relevance of the experiment and thus Trial Counsel failed to get the experiment into evidence. But for Trial Counsel's ineffectiveness, there is a reasonable probability that Petitioner would not have been convicted.

⁷ The state notes it is Johnson's burden to set forth all of the factual bases for her claims. Neither the state, nor the Court, are required to speculate about, much less address, what other deficiencies or claims of prejudice Johnson believes may be "included" within her claim regarding the coconut experiment.

(Petition, p.9, ¶ 15.d). These allegations fail to establish either deficient performance or prejudice.

Johnson has failed to articulate what additional efforts counsel could have undertaken in order to “provide evidence that the comforter used in the experiment was the same type of comforter that the State destroyed [sic – the allegation that the state “destroyed” the comforter is false – the state did not collect the comforter as evidence].” If the comforter was not available, counsels’ ability to prove that the comforter used in the experiment was “the same type” was necessarily limited. Johnson’s alternative argument, that counsel should have “show[ed] that the type of comforter used in the experiment would not have made a difference,” is unsupported by any evidence or explanation as to why the type of comforter would not have made a difference or that had counsel argued as much, the “experiment” would have been permitted. Johnson has therefore failed to establish her attorneys were deficient in this regard. With respect to prejudice, Johnson’s assertions are bare and conclusory and, as such, they are insufficient.

Because Johnson has failed to raise a genuine issue of material fact that counsels’ strategic decisions and efforts in relation to the comforter, Mr. Englert’s testimony, and the coconut experiment were objectively unreasonable or that she was prejudiced as a result, this claim should be summarily dismissed.

6. Failure To Adequately Cross-Examine

Johnson alleges counsel failed to adequately cross-examine a number of witnesses, "includ[ing] but . . . not limited to⁸] Matt Johnson, Alan & Julia Dupuis, EMT Schell Eliison, Sherrif [sic] Walt Femling, Detective Steve Harkin, Bruno Santos, Consuelo Cedeno, Glenda Osuno, Luis Ramirez (aka Juan Gonzales)[,] Jane Lopez, Becky Lopez and Carlos Ayala, and also include officers Raul Ornelas, and Stu Robinson." (Petition, p.9, ¶ 16.) Johnson, however, fails to allege any specific deficiencies or prejudice in relation to Alan Dupuis, Julia Dupuis, Schell Eliison, Glenda Osuno, Luis Ramirez, Becky Lopez, or Carlos Ayala. (See generally Petition, pp.9-13.) As such, there is no genuine issue of material fact that counsel was ineffective in relation to any of these witnesses. A review of the specific allegations in relation to the remaining witnesses reveals there is likewise no genuine issue of material that counsel were ineffective in relation to their strategic decisions regarding cross-examination, particularly in light of the fact that cross-examination is clearly a tactical decision. State v. Payne, ___ P.3d ___, 146 Idaho 548, 563, 199 P.3d 123, 138 n.2 (2008); State v. Osborne, 130 Idaho 365, 372-73, 941 P.2d 337, 344-45 (Ct. App. 1997).

a. Detective Steve Harkin

Johnson contends counsel was ineffective in "failing to adequately cross-examine" Detective Steve Harkin about his testimony that he "had personally spoken with Bruno Santos over 100 times within the last year." (Petition, p.10, ¶ 16.a.i.) According to Johnson, "police reports and supplements do not support this bald

⁸ Again, it is Johnson's burden to allege all claims in her petition. To the extent she thinks the cross-examination of additional witnesses not identified in her petition was inadequate, any such claims are not properly before the Court for consideration.

assertion” and counsel should have attempted to impeach Detective Harkin on this point. (Id.) Unless Johnson has personal knowledge regarding how many times Detective Harkin spoke with Santos, which she does not allege, there is no basis for her assertion that Detective Harkin’s testimony in this regard was false. That some unidentified police reports and supplements do not reflect the precise number of times Detective Harkin spoke with Santos does not mean his representation regarding his communications with Santos was false. To the extent Johnson believes the police reports and supplements are required to include such information or that a police report needs to be prepared every single time law enforcement speaks with someone, there is no such requirement. In terms of prejudice, Johnson has utterly failed to explain why cross-examination on this issue would have made a difference. (See id.)

Johnson also alleges counsel “failed to examine Detective Harkins regarding the lack of depth to the search of Santos [sic] residence, outside dumpster or . . . acquire fingerprints from his known associates” and failed to question him “about the inconsistencies in statements made by Santos family members, including his mother and cousin.” (Id.) This assertion is bare and conclusory and falls far short of establishing deficient performance or prejudice. In particular, Johnson fails to identify (1) how the search of Santos’ residence or dumpster was inadequate or what such a search would have uncovered that would be of any relevance to this case; (2) what “known associates” Detective Harkins should have obtained fingerprints from and why such fingerprints would have made a difference particularly since the previously unidentified fingerprints have since been determined to belong to Christopher Hill who Johnson has not alleged was a “known associate” of Santos; or (3) what alleged “inconsistencies in statements made by Santos family members” Detective Harkin

should have been asked about, how Detective Harkins could have even been questioned about the hearsay statements of other witnesses, or what purpose would have been served by such a cross-examination.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in cross-examining Detective Harkins, this claim should be dismissed.

b. Officer Raul Ornelas

Johnson alleges counsel was ineffective in “failing to adequately cross-examine Officer Raul Ornelas” regarding his testimony that he observed footprints in the wet grass in the back yard. (Petition, p.10, ¶ 16.a.ii.) More specifically, Johnson asserts counsel “failed to point out the [sic] Tim Richards, the neighbor who first responded to the scene had walked the very area of the back yard later observed by Ornelas,” and “failed to highlight the fact that Ornelas concluded that the footprints were made by more than one person, thereby pointing blame from Petitioner alone and onto unidentified murderers.” (Id.) These allegations fail to establish a *prima facie* case of either deficient performance or prejudice.

It is unclear why it would constitute deficient performance for counsel to fail to “point out” during Officer Ornelas’ testimony that “Tim Richards . . . walked the very area of the back yard later observed by Ornelas” during Officer Ornelas’ cross-examination, when this information was already in evidence. There is no requirement that counsel revisit the testimony of other witnesses during the cross-examination of any witness who testifies on a related matter.

With respect to Johnson’s assertion that counsel “failed to highlight the fact that Ornelas concluded that the footprints were made by more than one person,” she fails to explain exactly how counsel was supposed to “highlight” this point other than to

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emphasize it during cross-examination, which he did. (Tr., Vol. III, pp.1765-1766.) Johnson has failed to establish counsel's cross-examination of Officer Ornelas was deficient.

Johnson has also failed to establish she was prejudiced by the alleged inadequacies in counsel's cross-examination of Officer Ornelas. That Tim Richards may have left footprints in the backyard and that Officer Ornelas concluded there was more than one set of prints in the back yard does not demonstrate that greater emphasis of these two points would have led the jury to conclude Johnson was not guilty. Indeed, Mr. Richards' and Officer Ornelas' testimony are consistent – there was more than one set of tracks, one belonging to Mr. Richards and the other belonging to someone else (like Johnson). This hardly establishes Johnson's innocence, much less the existence of some other "unidentified murderer[]."

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in cross-examining Officer Ornelas, this claim should be dismissed.

c. Sheriff Walt Femling

Johnson alleges counsel "fail[ed] to adequately cross-examine the Blaine County Sheriff who made a statement during the early stages of the investigation to the effect that it was vital that police find a suspect in order to prevent a negative perception of the Sun Valley area" (Petition, p.10, ¶ 16.a.iii.) According to Johnson, this statement was "vital" to her defense because, she contends, "it showed that law enforcement personnel were more interested in placing a suspect into custody than to find the perpetrator of the crimes." (Petition, p.11, ¶ 16.a.iii.) These allegations fail to establish either deficient performance or prejudice.

Even assuming Sheriff Femling made a statement regarding the need to find a suspect, counsel was not deficient in failing to cross-examine the Sheriff about any such statement because it is hardly surprising that law enforcement would express an interest in finding the person who committed two horrific crimes. Such an interest certainly does not, as Johnson asserts, mean law enforcement would be willing to arrest just anyone, or that they could arrest someone without probable cause that the person committed the murders. Moreover, it is readily apparent from the record that the state did not rush to charge Johnson. The murders occurred on September 2, 2003. Johnson was not indicted until October 29, 2003, nearly two months later. This hardly reflects a rush to accuse Johnson of the murders. It is also apparent from the record that there was substantial evidence to support the charges against Johnson – as confirmed by the jury's guilty verdicts.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in cross-examining Officer Ornelas, this claim should be dismissed.

d. Matt Johnson

Johnson alleges counsel was ineffective in “failing to adequately cross-examine Matt Johnson” “relating to the[] false statements” regarding what time Matt left Moscow after learning his parents were murdered. (Petition, p.11, ¶ 16.a.iv.) The alleged falsity is based upon the discrepancy between when Matt indicated he left Moscow and when his traveling companions said they left Moscow. (Id.) More particularly, Matt indicated he left Moscow in the morning and he testified that he “believe[d]” he arrived in Bellevue, where his parents lived, at 3:00. (Tr., Vol. VII, p.4541, Ls.13-15.) On the other hand, Julie Weseman, who was the one who told Matt his parents had been murdered, and who drove with him to Bellevue, told law enforcement they left Moscow

at around 1:00 p.m. (Ex. 6.) Seila Laititi, who also traveled to Bellevue with Matt and Julie, also indicated they left Moscow in the "early afternoon," and arrived in Sun Valley between 7:00 and 8:00 p.m. (Ex. 6.)

Although Johnson contends it was deficient for counsel to fail to cross-examine Matt on whether he correctly identified the time he left Moscow, she fails to explain why such cross-examination was necessary or even critical to her defense. That Matt, rightly or wrongly, thought he left in the morning, as opposed to the afternoon, was not relevant to any issue in the criminal case. To the extent Johnson is implying that the timeframe was important because it may have implicated Matt in the murders, such a claim is patently ridiculous. Regardless of what time Matt left Moscow, it was after the murders occurred. And, there is no allegation that Matt was in Bellevue at the time of the murders. In fact, it is undisputed that Matt was in Moscow when the murders occurred. Johnson has failed to establish counsel was deficient for failing to attempt to impeach Matt on such a meaningless topic or that she suffered any conceivable prejudice as a result.⁹

Johnson next alleges counsel was ineffective for failing to "elicit from Matt Johnson that [she] did not know how to load a bolt action rifle, and did not like to shoot." (Petition, pp.11-12, ¶ 16.a.v.) Counsel, however, did attempt to get Matt to testify that Johnson did not like to shoot and Matt, in fact, testified that Johnson told him that. (Tr., Vol. VII, p.4579, Ls.2-23.) Counsel also asked a number of questions of Matt regarding

⁹ Included at the end of her assertion that counsel was ineffective for failing to cross-examine Matt regarding what time he left Moscow is an allegation that counsel failed to "cross-examine police witnesses regarding their lack of follow-up investigation into Matt Johnson." (Petition, p.11, ¶ 16.a.iv.) This is a bare and conclusory allegation that fails to establish any deficiency or even allege a claim of prejudice. This "claim" should therefore be dismissed.

Johnson's knowledge of guns and her ability to use them, including whether Johnson knew how to "load a bolt-action rifle." (See Tr, Vol. VII, pp.4578-4583, 4600; Vol. VIII, pp.5804-5805.) That Johnson may be disappointed with Matt's answers does not mean counsel was ineffective in cross-examining him.

Johnson also alleges counsel was ineffective for "fail[ing] to draw attention to the conflict between Matt Johnson's prior statements that he had been in Mel Speegle's closet to obtain a tape measure and hammer, when Speegle had stated to police no such tools were or could have been in his closet." (Petition, pp.11-12, ¶ 16.a.v.) This claim is based upon an apparent misunderstanding that Speegle would even know about the tape measure and hammer to which Matt was referring. At trial, Matt testified that, during the weekend prior to his parents' murders, he was at his parents' home for his uncle's wedding and was working on "improvements; trim, finish work." (Tr., Vol. VII, p.4525, L.3 – p.4525, L.24.) Part of this work was "on the closet upstairs in the guest room where [Speegle] had stayed." (Tr., Vol. VII, p.4525, L.24 – p.4526, L.1.) Matt "left a hammer and a tape measure on the floor, the right side of the closet, on the floor" while he was working in there, which he later retrieved to use elsewhere. (Tr., Vol. VII, p.4526, Ls.1-10.) It is unsurprising Speegle denied knowing anything about a tape measure or hammer being on the floor in or near his closet (Ex. 9), since they did not belong to him and were put there, and were removed shortly thereafter, by Matt. Thus, it is equally unsurprising that counsel did not cross-examine Matt on this point, and Johnson has failed to establish he was deficient for failing to do so. Johnson has also failed to establish or even allege how counsel's failure to cross-examine on this non-issue was prejudicial.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in cross-examining Matt Johnson, this claim should be dismissed.

e. Conseulo Ceden

Johnson alleges counsel was ineffective for failing to cross-examine Conseulo Ceden, Santos' mother, regarding inconsistencies between her pre-trial statements and her testimony at trial. (Petition, p.12, ¶ 16.a.v.) Specifically, before trial Ms. Ceden indicated her belief that Santos had not driven the car the morning of the murders because there was dew on the windshield. (Ex. 12.) At trial, however, Ms. Ceden testified that she could not tell whether the car had been driven and said she did not "pay attention" to "things like that." (Tr., Vol. IV, p.2775, L.19- p.2776, L.5.) Trial counsel's decision not to cross-examine Ms. Ceden was not only objectively reasonable, it was wise strategy because the defense would have no incentive to try and remind Ms. Ceden that she had previously provided information indicating Santos did **not** drive the car. To do so would have only strengthened Santos' alibi. Not only is the lack of prejudice from counsel's choice not to cross-examine Ms. Ceden readily apparent, Johnson has failed to allege how she was prejudiced by counsel's failure to do so.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in failing to cross-examine Conseulo Ceden, this claim should be dismissed.

f. Jane Lopez

Johnson alleges, "a discrepancy existed, between Jane Lopez's trial testimony and proof to the contrary found in phone records, indicating Bruno Santos was not at his mother's house. Trial Counsel was made aware of this discrepancy, yet, Trial Counsel failed to utilize the records on cross-examination." (Petition, p.12, ¶ 16.a.v.) This claim is bare and conclusory as to deficient performance and fails to allege any prejudice. Johnson has failed to identify or provide what phone records are inconsistent with Ms. Lopez's testimony or explain how they disprove Santos was not home at the time of the murders. The only "evidence" Johnson offers in support of this claim is a "see" citation to Mr. Dunn's affidavit (Ex. 2), with no page reference. (Petition, p.12, ¶ 16.a.v.) However, the only portion of Mr. Dunn's affidavit that refers to Ms. Lopez (Ex. 2, p.6, ¶ 13) is just as bare and conclusory as the allegations in Johnson's petition.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in failing to cross-examine Jane Lopez, this claim should be dismissed.¹⁰

g. Bruno Santos

Johnson alleges, "Trial Counsel wholly failed to cross-examine Bruno Santos or police officers regarding th[e] lack of a complete search of the residence and

¹⁰ At the conclusion of her allegation that counsel was ineffective in cross-examining Ms. Lopez, Johnson alleges "in addition to failing to cross-examine these Bruno Santos family members [referring to Ms. Cedenio and Ms. Lopez] regarding the weaknesses and inconsistency of their testimony bolstering alibi [sic], [counsel] wholly failed to cross-examine police witnesses regarding their lack of investigation into the false statements." (Petition, p.12, ¶ 16.a.v.) This claim is bare and conclusory, fails to allege any prejudice, and is wholly inadequate to raise a genuine issue of material fact that counsel should have asked some unidentified "police witnesses" some unidentified questions about Ms. Cedenio's and Ms. Lopez's statements, which Johnson contends, without any support, were false. This "claim" should therefore be dismissed.

surroundings, including trash dumpsters.”¹¹ (Petition, p.12, ¶ 16.a.vi.) Johnson, however, fails to explain why any defense attorney would cross-examine a witness about why some police officer did not conduct a more in-depth search of their home. There is no reason to believe Santos would know why law enforcement did or did not search his dumpster, or that it would be appropriate from him to speculate on that point or testify to any hearsay reason an officer may or may not have given him. This allegation fails to establish deficient performance and does not allege, much less establish, prejudice.

Johnson next asserts, “the most damning omission in Trial Counsel’s cross-examination [sic – trial counsel did not cross-examine Santos] was his failure to raise the fact that .25 caliber ammunition was found in Bruno Santos [sic] residence and in the pink robe found in the trash can at the crime scene.” (Petition, p.12, ¶ 16.a.vi.) First, this allegation misstates the record upon which Johnson relies. Exhibits 13 and 14 do not indicate that “.25 caliber ammunition was **found** in Bruno Santos [sic] residence.” Rather, they indicate that Santos claimed he had “25 special shells at his residence.” (Ex. 13; see also Ex. 14.) Second, it is not objectively unreasonable for counsel to not inquire about the presence of shells at someone’s residence that are completely unrelated to the type of ammunition used to murder Alan and Diane.

¹¹ The state has already addressed Johnson’s claim that counsel was ineffective for failing to cross-examine Detective Harkin about the scope of the search conducted at Santos’ home. Therefore, the state will not address it again. To the extent Johnson is attempting to assert that someone other than Detective Harkin should have been cross-examined on this point, she has failed to identify what other “police witnesses” she believes should have been the subject of such cross-examination. As such, any claim regarding other “police witnesses” is bare and conclusory and must be dismissed.

Trial counsel clearly made a strategic and tactical decision not to cross-examine Santos. Johnson has failed to establish that this decision was objectively unreasonable or based upon inadequate preparation. Johnson has also failed to establish a *prima facie* case of prejudice. Johnson's only claim of prejudice is that had Santos been cross-examined, "the jury would have been presented with the true picture of Bruno Santos [as a gang member, drug dealer, and statutory rapist], and it is reasonably likely [she] would not have been convicted of the crimes charged." (Petition, p.13, ¶ 16.d.) This allegation is bare and conclusory and fails to explain how such evidence of Santos' character, assuming it was admitted, would have negated all of the evidence indicating Johnson was the murderer or, at a minimum, an aider and abettor.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in failing to cross-examine Bruno Santos, this claim should be dismissed.

h. Stu Robinson

Johnson next alleges: "Trial Counsel was, or should have been aware of Officer Stu Robinson's Grand Jury testimony asserted [sic] that no latent prints were found at the crime scene," and that such testimony "was inaccurate and false" because "the record reveals that thirty nine (39) latent prints were found at the scene" (Petition, p.13, ¶ 16.b.) Because Johnson fails to provide a citation to the grand jury transcript wherein Officer Robinson allegedly made this statement, it is difficult to ascertain the accuracy of her claim. To the extent Johnson is referring to that portion of Officer Robinson's testimony when he was asked, "Now based on your, I guess, investigation and as part of your case review, as far as you know, did any identifiable prints come back on the gun, the scope or the casings?" and answered, "They could not locate any prints that could be identified" (Grand Jury Tr., p.189, Ls.17-22), this is clearly not a

statement that “no prints were found” – it is only a statement that no prints could be identified.

Even if Officer Robinson made such a statement during his grand jury testimony, Johnson has failed to articulate why it was deficient for counsel to fail to ask him about this misstatement, which would have clearly been contrary to the evidence that such prints did exist. Johnson has also failed to allege any genuine issue of material fact that she was prejudiced as a result. She only contends, in bare and conclusory fashion, that “there is a reasonable probability that [she] would not have been convicted” had counsel “raise[d] this inconsistency in his cross examination of Officer Robinson.” (Petition, p.13, ¶ 16.b.) It is difficult to fathom how any potential misstatement by Officer Robinson **before the grand jury** would have affected the outcome of Johnson's **trial**.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in cross-examining Officer Robinson, this claim should be dismissed.

i. Officer Ross Kirtley

Johnson alleges counsel was ineffective in “failing to present evidence of an audio recording, recorded inadvertently by Officer Ross Kirtley . . . which clearly proved the theory that police focused on [her], to the exclusion of all other possible suspects and theories, because she was the easiest target.” (Petition, p.13, ¶ 16.c.) This claim is bare and conclusory and Johnson has failed to offer any admissible evidence in support of her assertions. Her only “evidence” is another “see” reference to Mr. Dunn’s affidavit with no citation to any particular page. (Petition, p.13, ¶ 16.c.) Mr. Dunn’s affidavit, in turn, contains hearsay about what he claims various officers said on the alleged tape. (Ex. 2, p.4, ¶ 10.) These bare, conclusory, unsupported allegations,

which include no allegation of prejudice, are insufficient to establish Johnson is entitled to an evidentiary hearing on this claim. This claim should therefore be dismissed.

Because Johnson has failed to allege a *prima facie* case that counsel was ineffective in cross-examining Officer Kirtley, this claim should be summarily dismissed.

j. Failure To Call Witnesses

Idaho's appellate courts have recognized that "[t]rial counsel's decision of which witnesses to call is encompassed in that aspect of trial counsel's role denominated 'trial tactics' or 'strategic choices.'" Campbell v. State, 130 Idaho 546, 548, 944 P.2d 143, 145 (Ct. App. 1997) (citing State v. Larkin, 102 Idaho 231, 234, 628 P.2d 1065, 1068 (1981)). Nevertheless, Johnson alleges counsel was ineffective in failing to call various neighbors as witnesses. (Petition, pp.13-14, ¶ 17.) Specifically, Johnson alleges that had counsel introduced the following evidence, she "would not have been convicted:"

- a. Neighbor Terri Sanders, residence 1115 River View, was awoken at approximately 5:40 a.m. by dogs barking on the morning of the murders, supporting Petitioner's statements that something nefarious was afoot in the neighborhood.
- b. Neighbor Stephanie Hoffman was awoken in the middle of the night by a figure who had entered the bedroom in which she slept on the night of the murders.
- c. Neighbor Rick Olsen was woke up [sic], while sleeping in a camper trailer in the driveway of his home, 1136 Riverview Drive, at 5:00 a.m. the morning of the murders.
- d. Neighbor, Linda O'Connor's thirteen (13) year old son, whose room at 1042 Glen Aspen Drive, faces the road witnessed a white truck speed down the road in the middle of the night while he was up, not able to sleep and watching animal planet.

(Id. (citations omitted).)

There is no genuine issue of material fact that counsel was deficient for failing to call any of the foregoing witnesses nor is there any genuine issue of material fact that

Johnson was prejudiced as a result of counsels' strategic decision not to do so. Why counsel would need to call Terri Sanders as a witness to prove something "nefarious was afoot" is unclear. Nobody disputes something "nefarious was afoot," and Ms. Sander's statement that she woke up at 5:40 a.m. to the sound of dogs barking and heard a gun shot twenty minutes later (Ex. 16) in no way disproves the state's theory or exonerates Johnson.

As for Ms. Hoffman's statement that "sometime in the night" she either woke up or dreamed that she woke up and "saw [a] figure standing in [her] doorway" but fell back to sleep and slept "through everything – the gun shots – the sirens the dogs barking etc." (Ex. 18), is even less relevant or useful. What would have been troublesome (although not deficient) is if counsel would have called this witness to testify.

Also insignificant to Johnson's defense is the fact that Mr. Olsen "woke up" "the morning of the murders." A lot of people surely woke up that morning. That does not mean they were critical witnesses to Johnson's defense.¹² Equally insignificant is the fact that Linda O'Conner's son was up at some unspecified time in the middle of the night watching television when a white truck sped down the road.

Because Johnson has failed to raise a genuine issue of material fact that counsel was ineffective for failing to call a variety of neighbors who had nothing to contribute to her defense, this claim should be dismissed.

¹² Although not included in her allegations, Mr. Olsen's statement also indicated he heard a gunshot sometime after "0500 hours," then went back to sleep. (Ex. 19.) This statement would not have been useful to the defense either given that, at best, it only confirms Alan and Diane were murdered sometime after 5:00 a.m., a fact which is not in dispute.

F. Claim Five – “Ineffective Assistance Of Trial Counsel In Dealing With Fingerprint Evidence Issues”

In claim five, Johnson alleges ineffective assistance of counsel in relation to how her trial counsel handled the investigations and presentation of fingerprint evidence in her case. (Petition, p.15, ¶ 18.) None of Johnson's allegations, however, create a genuine issue of material fact that would entitle her to an evidentiary hearing.

Johnson first alleges that her counsel provided deficient performance by failing to understand that the state had not provided all of the available fingerprint evidence until during the trial and, when the prosecution did provided the evidence during trial, failing to move for a continuance to conduct further investigation. (Petition, p.15, ¶ 18.i.) Johnson does not allege or provide evidence of what evidence she alleges was not disclosed by the prosecution until during trial. She has failed to plead or support a *prima facie* case that her counsel performed at all deficiently or that she was prejudiced thereby.

Johnson next alleges counsel failed to make sure that all “useable fingerprints” were submitted to computer databases for potential matches. (Petition, p.15, ¶ 18.ii.) She also alleges counsel should have gotten a court order for further investigation of the identity of persons whose fingerprints had been collected at the crime scene (Petition, p.16, ¶ 18.v). Counsel, however, testified that he preferred that no further investigation be done lest that investigation limit the defense's ability to argue that the unidentified prints could belong to the actual killer. (06/24/09 Pangburn Tr., p.106, L.24 – p.107, L.18.) Consistent with this strategy, counsel elicited testimony that there were “at least ten” fingerprints that could have been run through the computer fingerprint identifications systems. (Trial Tr., Vol. VII, p.5083, L.1 – p.5084, L.22.) Whether to try to compel further investigation into the identity of persons whose fingerprints may have

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been present on items associated with the crime, or to pursue a trial strategy of claiming the state investigation was inadequate and did not exclude unknown persons who might have committed the crime, was clearly a tactical decision that Johnson has failed to show was made on an objectively inadequate basis. She has also failed to show by admissible evidence any prejudice from this alleged deficiency.

Johnson next alleges counsel failed to provide their expert with the "entire police investigation file regarding fingerprints," access to the crime scene, and "photographic depictions" of latent prints found. (Petition, p.16, ¶ 18.iii.) Again, Johnson has failed to show exactly what materials counsel did not provide the defense expert or what conclusions that expert might have reached based on those materials. Johnson has therefore failed to present a *prima facie* claim of either prong of ineffective assistance.

Johnson further alleges counsel failed to elicit expert opinion testimony about the potential for finding latent prints on a trash can lid and other places at the crime scene (Petition, p.16, ¶ 18.iv); failed to elicit expert testimony that a palm print on the rifle was fresh (Petition, p.16, ¶ 18.vi); and failed to elicit testimony that the fingerprints on the ammunition box and the scope were fresh (Petition, p.16, ¶ 18.vii). This argument fails because counsel did, in fact, elicit testimony as to all of these things. (Trial Tr., Vol. VII, p.5069 L.11 – p.5070, L.18 (palm print on gun likely to evaporate rather quickly); p.5075, L.15 – p.5078, L.9 (palm print on rifle likely from last person to load gun); p.5074, L.10 – p.5075, L.14 (fingerprint on insert in ammunition box and scope match); p.5083, L.1 – p.5084, L.9 (same); p.5090 L.18 – p.5092, L.19 (same); p.5124, Ls.6-23 (failure to fingerprint trashcan lids).) Even if counsel had not presented this testimony, Johnson has presented no evidence that the decision to present the expert testimony they did instead of the evidence she in retrospect wishes they had was the result of any

objective shortcoming in making a tactical decision. Finally, there are no grounds for finding prejudice on the state of this record.

Finally, Johnson faults counsel for allegedly failing to present evidence that latent fingerprints on doorknobs were likely made by the last persons to use those doorknobs. (Petition, p.17, ¶ 18.viii.) Again, contrary to Johnson's assertions, this testimony was presented at trial. (Trial Tr., Vol. VII, p.5065, L.2 – p.5067, L.3.) Even if it had not been presented, Johnson has presented no evidence of deficiency or prejudice from this tactical decision.

G. Claim Six – "Ineffective Assistance Of Counsel In Failing To Lay A Proper Foundation For Psychological [sic] Opinion Evidence"

In her sixth claim, Johnson contends her trial counsel "fail[ed] to lay the proper foundation to allow the admission into evidence, during the hearing on Defendant's Motion to Suppress Statements, of Dr. Craig Beaver, PhD regarding his opinion whether under all the circumstances Sarah Johnson knowingly and voluntarily waived her right to counsel." (Petition, p.17, ¶ 19.) This claim should be dismissed as untimely because it was not raised until Johnson filed her first amended petition and because it does not arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading."

Even if not dismissed as untimely, Johnson has failed to establish there is a genuine material issue of fact as to whether counsel's performance at the suppression hearing was deficient or that the alleged deficiency was prejudicial. Johnson has failed to identify how the foundation was inadequate, what additional foundation could have been laid, what statements would have been suppressed, or on what basis the court would have ordered them suppressed. Johnson has therefore failed to allege a *prima*

facie case that counsel was ineffective in this regard, and this claim should be summarily dismissed.

H. Claim Seven – “Ineffective Assistance Of Trial Counsel In Dealing With Aiding And Abetting Theory Of Guilt”

In claim seven, Johnson alleges trial counsel were ineffective by (1) “[f]ailing to recognize that the State was pursuing a theory that Petitioner was guilty under an aiding and abetting theory;” (2) “[f]ailing to adequately research Idaho law regarding the possibility of the Court instructing the jury on a theory of guilt by aiding and abetting when the information charged Petitioner with actually shooting the victim;” (3) “[p]ursuing a theory of defense which did not provide any defense or rebuttal to the aiding and abet [sic] theory;” and (4) “failing to object to jury instructions which counsel recognized were confusing and which would allow the Petitioner to improperly be found guilty of a sentencing enhancement.” (Petition, pp.18-19, ¶¶ 20-21.) Johnson further alleges, “[b]ut for Trial Counsel’s rendering of ineffective assistance of counsel [sic – deficient performance] as [alleged], there is a reasonable probability that the outcome of the proceeding would have been different.” (Petition, p.19, ¶ 20.) None of these allegations create a genuine issue of material fact that would entitle Johnson to an evidentiary hearing.

Johnson’s claim that counsel failed to object to the instructions related to aiding and abetting is belied by her own allegations. By raising a concern that the instructions “were confusing” and “would allow [Johnson] to improperly be found guilty of a sentencing enhancement,” counsel objected to the instructions. That the court gave an instruction notwithstanding the objection does not establish counsel was ineffective.

Johnson's assertions in relation to counsels' alleged awareness, or lack thereof, regarding relevant law on aiding and abetting and the state's theory of the case also fails to raise a genuine issue of material fact that would entitle her to an evidentiary hearing. The state's primary theory of the case was, in fact, that Johnson was the shooter. (See Tr., Vol. III, pp.1471-1502 (state's opening argument).) That the state requested an aider and abettor instruction in order to address any argument or implication that the shooter was someone else, such as Bruno or his "associates," does not change the state's primary theory.

Johnson's argument that counsel was ineffective for "fail[ing] to seek a pretrial ruling on the issue of whether the District Court would give an aiding and abetting instruction should the evidence support it" (Petition, p.18, ¶ 20.e), fails as a matter of law because a trial court is **required** to give any instruction supported by the evidence. State v. Severson, 147 Idaho 694, ___, 215 P.3d 414, 430-431 (2009). Moreover, the Idaho Supreme Court has already concluded it was proper to instruct the jury on aider and abettor liability in this case. Johnson, 145 Idaho at 972-977, 188 P.3d at 914-919.

Finally, Johnson contends counsel was ineffective for failing to "either seek[] a continuance to properly investigate the State's new theory" or "prepar[e] and present[] a defense which actually addressed this new theory of the case." (Petition, p.19, ¶ 20.) Johnson, however, fails to explain what additional "investigation" could have been performed that would necessitate a continuance, or what theory she believes counsel should have "prepar[ed] and present[ed]" to address aider and abettor liability. As such, Johnson has failed to raise a genuine issue of material fact that counsel was deficient in this regard.

Johnson has also failed to raise a genuine issue of material fact that she was prejudiced as a result of counsels' approach to aider and abettor liability. Given that Johnson has failed to identify any defense that she could have presented demonstrating she was not either the shooter or did not aid and abet someone else in committing the murders, she cannot demonstrate that the jury, assuming they found she was not the shooter, would not have convicted her as an aider and abettor.

Because Johnson has failed to raise a *prima facie* case that counsel was ineffective in relation to the aider and abettor theory of liability, this claim should be summarily dismissed.

I. Claim Eight – “Ineffective Assistance Of Trial Counsel In Investigating The Allegation Of Deputy Coroner Steven Pankey”

In her eighth claim, Johnson asserts trial counsel were ineffective “in failing to investigate and follow up on a phone call received from Steven Pankey informing trial counsel that he had important information.” (Petition, p.20, ¶ 22.) This claim should be dismissed as untimely. Alternatively, the claim should be dismissed because Johnson has failed to raise a genuine issue of material fact that counsel was ineffective in relation to Mr. Pankey.

Because Johnson's eighth claim is a new claim that is untimely and does not relate back to her original petition, the claim should be dismissed.

Even if this Court declines to dismiss this claim as untimely, Johnson has failed to establish a *prima facie* case that counsel was ineffective in relation to Mr. Pankey. In support of her eighth claim, Johnson has submitted an affidavit in which Mr. Pankey avers that he contacted unidentified “trial counsel” and informed him that “he had important information.” (Ex. 33, p.2, ¶ 5.) The affidavit further asserts that Mr. Pankey

was never personally re-contacted by the defense. (Id.) The affidavit does not, however, assert that Mr. Pankey did not tell "trial counsel" about the alleged statement of Sheriff Femling over the phone. (See generally, Ex. 33.) Nor are there any allegations relating to what actions counsel did or did not take in response to this telephone contact, and the only alleged failure is the failure to personally re-contact Mr. Pankey. Nothing in law or in fact would support a belief that the failure to re-contact Mr. Pankey was objectively unreasonable. Johnson has therefore failed to raise a genuine issue of material fact that counsel was ineffective in relation to Mr. Pankey.

Johnson has likewise failed to raise a genuine issue of material fact that she was prejudiced by the alleged lack of communication between counsel and Mr. Pankey. Johnson's allegation of prejudice is: "If Trial Counsel had investigated and followed up on said phone call he would have learned **that it was alleged** that the Sheriff and the Prosecuting Attorney had tampered with evidence and would have produced testimony of Mr. Pankey at trial, thereby creating reasonable doubt." (Petition, p.20, ¶ 22 (emphasis added).) Thus, the allegation is not that further investigation would have revealed any actual evidence that Sheriff Femling tampered with any evidence, but counsel would have only discovered Mr. Pankey's allegations that Sheriff Femling had done so and would have "produced testimony of Mr. Pankey at trial."

The claim that further investigation would have revealed that "it was alleged" that the Sheriff and Prosecutor had "tampered with evidence" makes no sense. If it was alleged by someone other than Mr. Pankey there is nothing in Mr. Pankey's affidavit or in the Petition that would support such an inference. If Johnson is claiming that Mr. Pankey is asserting that Sheriff Femling actually tampered with evidence, that allegation is at odds with Mr. Pankey's affidavit. Nowhere in the affidavit does Mr. Pankey allege

anyone tampered with evidence. He alleges only that Sheriff Femling said to Prosecutor Thomas, "Well, I guess I've got to move evidence to make a case." (Ex. 33, p.2, ¶ 4.) That statement is perfectly innocent and no reasonable understanding of that statement leads to the conclusion that Sheriff Femling was proposing tampering with evidence. In short, there is no allegation that Sheriff Femling actually tampered with evidence, stated an intent to tamper with evidence, or anything else of the sort.

The allegation that if counsel would have conducted further investigation he would have "produced testimony of Mr. Pankey at trial, thereby creating reasonable doubt" (Petition, p.20, ¶ 22) also fails to state a claim of prejudice. This is the sort of bare assertion and speculation that is insufficient to show prejudice. The actual testimony that Mr. Pankey would have provided according to his affidavit was that Sheriff Femling stated, "Well, I guess I've got to move evidence to make a case." Such testimony has no chance of producing an acquittal because it is a perfectly innocuous statement. Even if true, the allegations do not state a *prima facie* claim of prejudice.

Because Johnson has failed to allege any act or omission in relation to Mr. Pankey that could be considered deficient performance and because she only makes a bare assertion of prejudice without any basis in fact for concluding that any prejudice occurred, she has failed to raise a genuine issue of material fact that would entitle her to an evidentiary hearing on claim eight.

J. Claim Nine – "Ineffective Assistance Of Trial Counsel In Failure To Utilize Readily Available Psychiatric Evidence"

In claim nine, Johnson alleges trial counsel were ineffective "in failing to pursue and present a defense that included expert psychiatric testimony which would have informed the jury that a double patricide-matricide, is an incredibly rare phenomena"

and even “rarer still with a girl of tender years, such as the Petitioner, who has not been physically and/or sexually abused, is not schizophrenic and/or intoxicated” (Petition, pp.20-21, ¶ 23.) According to Johnson, such testimony would have “creat[ed] reasonable doubt, and a substantial likelihood of a verdict of not guilty.” (Petition, p.21, ¶ 23.) Johnson further asserts, “any criminal defense attorney meeting a minimum standard of effectiveness, would have known to inquire into the mental state of the defendant and consult a psychiatrist regarding all possible defenses including criminal intent.” (Petition, p.21, ¶ 23.)

This claim should be dismissed as untimely because it was not raised until Johnson filed her first amended petition and because it does not arise “out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.” Alternatively, Johnson has failed to establish counsel was deficient for “failing to pursue and present a defense” that it would be rare for someone like her to kill both her parents or that she was prejudiced by counsel’s failure to pursue such a defense. Decisions relating to the defense theory at trial are strategic and will not serve as a basis for relief absent evidence the decision was based on inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review. Osborne, 130 Idaho at 372-373, 941 P.2d at 344-345. Johnson has failed to allege any basis from which the Court could conclude counsels’ trial strategy was based on ignorance, inadequate preparation or was otherwise objectively unreasonable.

To the contrary, any decision not to attempt to introduce Dr. Worst’s opinion testimony would have been sound strategy for at least two reasons. First, such evidence would likely not have been admissible because statistical evidence relating to typical perpetrators of parricide is not relevant to whether Johnson, in particular,

murdered her parents. See State v. Parkinson, 128 Idaho 29, 33, 909 P.2d 647, 651 (Ct. App. 1996) (noting evidence of “expert testimony regarding whether a defendant fits an alleged ‘sexual offender profile’ has been almost universally rejected in other jurisdictions”). Second, had Dr. Worst testified based on an evaluation of Johnson, she would have effectively waived her Fifth Amendment rights and been required to submit to an evaluation by a psychological expert chosen by the state. See Estelle v. Smith, 451 U.S. 454, 465 (1981). There is no claim that Johnson was willing to submit to such an evaluation, and such a decision could have proven very detrimental to Johnson's case.

Johnson has also failed to allege a *prima facie* case of prejudice. Johnson's only claim of prejudice in this regard is a bare and conclusory allegation that “there is a reasonable probability that the outcome of the trial proceeding would have been different.” (Petition, p.21, ¶ 23.) Such conclusory allegations are insufficient to satisfy Johnson's burden of establishing a *prima facie* case of prejudice. Moreover, even if Dr. Worst would have testified consistent with his affidavit (Ex. 22), there is no basis for concluding the jury would have ignored all of the evidence connecting Johnson to the murders merely because parricide is “very rare” or because Dr. Worst does not think Johnson meets the typical profile of someone who would commit such crimes. (See Ex. 22, pp.2-3, ¶ 5.) Indeed, Dr. Worst does not claim, nor could he, that Johnson, in fact, did not commit the murders; he can only testify that, in his opinion, she was unlikely to do so. There is no reasonable probability the jury, in the face of the overwhelming evidence in this case, would have found Johnson not guilty simply because Dr. Worst believed she was an unlikely perpetrator.

Because Johnson's ninth claim is untimely and because, even if timely, she has failed to raise a genuine issue of material fact that counsel was ineffective for failing to pursue a defense based upon Dr. Worst's opinions, this claim should be dismissed without a hearing.

K. Claim Ten – "Ineffective Assistance Of Trial Counsel Due To Violations Of Rules Of Professional Conduct"

In claim ten, Johnson contends "lead trial counsel Bob Pangburn" was ineffective because, she asserts, he "consistently and abusively violated the Rules of Professional Conduct by communicating with the media in a self promotional manner, rather than diligently preparing himself to interrogate witnesses and otherwise prepare for trial."¹³ (Petition, p.21, ¶ 24.) This claim should be dismissed as untimely because it was not raised until Johnson filed her first amended petition and because it does not arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading."

Alternatively, Johnson has failed to even identify what ethical rule counsel allegedly violated, much less allege a *prima facie* case of ineffective assistance of counsel based on her attorney's alleged ethical violations. Rather, Johnson asserts in bare and conclusory fashion that Mr. Pangburn's communications with the media occurred at the expense of counsel's preparation. This is nothing more than speculation supported only by Mr. Dunn's opinions regarding the extent of Mr.

¹³ On a related point, Johnson "note[s]" on page 6 of her Petition that Mr. Pangburn "is suspended from the practice of law in the State of Idaho . . . and in the State of Oregon." (Petition, p.6, ¶ 14.) Mr. Pangburn's suspension is, however, irrelevant to whether he provided ineffective assistance of counsel in Johnson's case. See Berkey v. United States, 318 F.3d 768, 774 (2003) ("Whatever shortcomings Berkey's lawyer might have in his general practice of law, we are still bound to review the matter under the principles set forth in *Strickland*.").

Pangburn's preparations. (Petition, p.21, ¶ 24; Ex. 2.) However, Mr. Dunn's perceptions of Mr. Pangburn's preparedness do not establish that Mr. Pangburn was, in fact, not prepared. In fact, the record, transcript, and Mr. Pangburn's deposition reveal the contrary. That Johnson now raises several claims relating to perceived deficiencies, and even assuming Mr. Pangburn was deficient in some manner, Johnson has failed to establish any connection between Mr. Pangburn's communication with the media and his alleged deficiencies. As such, Johnson's claim that counsel was ineffective for communicating with the media should be summarily dismissed.

Because Johnson's tenth claim is untimely and because, even if timely, she has failed to raise a genuine issue of material fact that counsel violated any ethical rules or was ineffective as a result of his media contacts, this Court should dismiss this claim.

L. Claim Eleven – “Ineffective Assistance Of Appellate Counsel”

In her eleventh claim, Johnson alleges appellate counsel was ineffective for failing to (1) raise “an allegation of error by the trial court in denying the Motion to Suppress Statement Against Interest made subsequent to retainer of counsel, Doug Nelson, and Nelson's issuance of a ‘cease and desist’ questioning letter” (Petition, p.22, ¶ 25); and (2) “argue insufficient evidence to support an aiding and abetting jury instruction” (Petition, p.22, ¶ 26.) Johnson has failed to establish she is entitled to a hearing on either of these claims.

1. General Legal Standards Applicable To Ineffective Assistance Of Appellate Counsel Claims

The standards that apply to ineffective assistance of trial counsel claims also apply to claims of ineffective assistance of appellate counsel, *i.e.*, in order to establish

ineffective assistance of appellate counsel, a petitioner has the burden of proving that his counsel's representation on appeal was deficient and that the deficiency was prejudicial. Evitts v. Lucey, 469 U.S. 387 (1985); Mitchell v. State, 132 Idaho 274, 276, 971 P.2d 727, 730 (1998). The relevant inquiry is whether there is a reasonable probability that, but for counsel's errors, Smith would have prevailed on appeal. Smith v. Robbins, 528 U.S. 259, 285 (2000). Even if a defendant requests that certain issues be raised on appeal, appellate counsel has no constitutional obligation to raise every non-frivolous issue requested by the defendant. Jones v. Barnes, 463 U.S. 745, 751-53 (1983); Aragon v. State, 114 Idaho 758, 765, 760 P.2d 1174, 1181 (1988) (citing Jones, 463 U.S. at 751-754). Moreover, a claim of ineffective assistance of counsel on appeal cannot be predicated upon counsel's failure to raise meritless issues. Matthews v. State, 122 Idaho 801, 809 n.2, 839 P.2d 1215, 1223 n.2 (1992); Maxfield v. State, 108 Idaho 493, 501, 700 P.2d 115, 123 (Ct. App. 1985). As explained by the Supreme Court, "Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Jones at 752.

2. Johnson Has Failed To Allege A Genuine Issue Of Material Fact That Appellate Counsel Was Ineffective For Failing To Challenge The District Court's Order Denying Her "Motion To Suppress Statement Against Interest"

Johnson alleges appellate counsel was ineffective in "failing to raise on appeal an allegation of error by the trial court in denying the Motion to Suppress Statement Against Interest." (Petition, p.22, ¶ 25.) The state has been unable to find any such motion in the record. Although Johnson filed three suppression motions, none of them

are entitled "Motion to Suppress Statement Against Interest."¹⁴ Because appellate counsel could not raise an issue related to a motion that was never filed, Johnson has failed to establish appellate counsel was ineffective in this regard.

To the extent Johnson is referring to her motion to suppress the statements she made to law enforcement, she has failed to articulate why counsel was deficient for failing to pursue this issue on appeal. In particular, Johnson has not identified why the trial court's denial of the motion was erroneous or on what basis the appellate court would have reversed the trial court's ruling.

Johnson's claim of prejudice – that "it is more likely than not the Supreme Court would have reversed the District Court error and remanded the matter for new trial" – is also bare and conclusory. Not only has Johnson failed to identify any actual error in the trial court's reasoning, she has failed to identify what statements would have been suppressed had the appellate court reversed the district court, nor has she explained why the appellate court would have concluded admission of those statements amounted to reversible error.

Johnson's bare and conclusory allegations that appellate counsel was deficient for failing to challenge the denial of whatever suppression motion she is referring to are insufficient to entitle her to an evidentiary hearing.

¹⁴ Johnson filed three suppression motions: (1) Motion to Suppress Defendant's Statements to James and Linda Vavold (R., Vol. II, pp.366-67); (2) Motion to Suppress Defendant's Statements to Law Enforcement Personnel (R., Vol. II, p.368); and (3) Motion to Suppress Defendant's Statements to Malinda Gonzales (R., Vol. II, pp.369-370).

3. Johnson Has Failed To Allege A Genuine Issue Of Material Fact That Appellate Counsel Was Ineffective For Failing To "Argue Insufficient Evidence To Support An Aiding And Abetting Jury Instruction"

Johnson alleges appellate counsel was also ineffective for "failing to argue insufficient evidence to support an aiding and abetting jury instruction." (Petition, p.22, ¶ 26.) The alleged prejudice in relation to this claim of deficiency is: "But for Appellate Counsel's failure to raise this allegation of error it is more likely than not the Supreme Court would have reversed the District Court error and remand [sic] the matter for new trial." (Id.) Like Johnson's first allegation of ineffective assistance of appellate counsel, this claim is also bare and conclusory and should be dismissed.

M. Claim Twelve – "Newly Discovered Evidence"

Johnson alleges there is newly discovered evidence warranting a new trial. (Petition, pp.22-25, ¶¶ 27-30.) Specifically, she alleges that latent fingerprints on Mel Speegle's rifle scope and an insert on a box of .264 caliber ammunition were identified as belonging to Christopher Kevin Hill.¹⁵ Johnson has failed to present a *prima facie* claim that newly discovered evidence warrants a new trial.

In State v. Drapeau, 97 Idaho 685, 551 P.2d 972 (1976), the Idaho Supreme Court articulated a four-part test a defendant must satisfy in order to be entitled to a new trial based upon newly discovered evidence. That test requires a defendant to show that the evidence offered (1) is "newly discovered and was unknown to the defendant at

¹⁵ Johnson also alleges that the newly discovered evidence somehow shows that "Tina Walthall's trial testimony asserting that Ms. Eguren has provided all latent print lift cards was false" and that if "this truth" had been known it is "reasonably likely" that she would not have been convicted. (Petition, p.23, ¶ 28a.) Johnson has submitted no admissible evidence whatsoever that Walthall's trial testimony was false. (Compare, Trial Tr., Vol. VIII, p. 5852, L. 14 – p. 5854, L. 10.) In addition, there are no reasonable grounds to believe that any evidence regarding what fingerprint cards Ms. Eguren was provided would have in any way been important to the verdict.

the time of trial"; (2) is material, not merely cumulative or impeaching; (3) will probably produce an acquittal; and (4) could not have been discovered through the exercise of diligence on the part of the defendant. Id. at 691, 551 P.2d at 978. In announcing this four-part test, the Court cited Professor Wright's text on Federal Practice and Procedure and specifically noted his comment, "after a man has had his day in court, and has been fairly tried, there is a proper reluctance to give him a second trial." Id. (citation omitted).

Consistent with the four-part test in Drapeau and Professor Wright's comment, the Idaho Supreme Court has consistently held that evidence known to the defendant at the time of trial cannot be considered newly discovered. See, e.g., State v. Weise, 75 Idaho 404, 410, 273 P.2d 97, 100 (1954) (evidence which defendant was aware of prior to trial but chose not to present is not newly discovered); State v. Morrison, 52 Idaho 99, 11 P.2d 619, 622 (1932) (evidence discovered during trial is not newly discovered); State v. Lumpkin, 31 Idaho 175, 169 P. 939, 940 (1917) (facts unknown at time of trial could be considered newly discovered); State v. Cook, 13 Idaho 45, 88 P. 240, 242 (1907) (concluding evidence that colts were not stolen but actually belonged to rancher for which defendants worked was not newly discovered).

The newly discovered evidence in this case is neither material nor likely to produce an acquittal. At trial, evidence of fingerprints on the murder weapon, the scope, the box and elsewhere was presented and dealt with extensively. (Trial Tr., Vol. VII, p.5045, L.15 – p.5132, L.15; Vol. VIII, p.5808, L.1 – p.5843, L.4; p.5846, L.16 – p.5858, L.17; Vol. V, p.2994, L.10 – p.3077, L.25.) It was established that unidentified fingerprints were on the scope, gun, some of the shells, and the box containing the shells. (Trial Tr., Vol. V, p.3077, Ls.1-17.) Thus, it was established at trial that Johnson

had left no fingerprints on those items; if any of the prints on those items belonged to the "real killer," then the killer was not Johnson and was some unidentified person.

Because evidence that people other than Johnson had at some point handled the scope and the ammunition box, and had left fingerprints thereon, was well established at trial, the only evidence that is even arguably newly discovered is the identity of one of the previously unidentified persons to handle the scope and the box of ammunition. Knowing his name, however, is not material to this case or likely to produce an acquittal. Evidence at trial that someone (who was unknown at that time) other than Johnson had touched the scope and ammunition box did not create a reasonable doubt as to Johnson's guilt. The jury had no reasonable doubt that the person who had deposited those fingerprints was in fact the actual killer, instead of Johnson – otherwise the jury would have acquitted. Knowing a name to associate with those prints does not change that calculus in the slightest.

In addition, both Mel Speegle (the owner of the gun) and Hill gave statements indicating when, how and where Hill had touched the gun. Being able to do so made the fingerprint evidence of even *less* value to Johnson than it was at trial when the state was not able to provide any information about how the unknown fingerprints could have gotten where they were found.

Whether an unknown person who had left fingerprints on the scope and ammunition box could have been the killer was one of the issues at trial. The jury clearly rejected the argument that the prints created reasonable doubt as to Johnson's guilt. That we now know the source of at least some of those prints in no way indicates that a jury would view the presence of those prints any differently. Because the jury necessarily rejected the argument that the "real killer" left the fingerprints, newly

discovered evidence that the prints belong to a friend of the gun owner who helped him sight the gun in some time before the killing is not material or likely to produce an acquittal.

Johnson also asserts she is entitled to a new trial based upon the "discovery" of Mr. Pankey's allegation that he heard Sheriff Femling say, "Well, I guess I've got to move evidence to make a case." (Petition, p.25, ¶ 30.) For the reasons set forth in Section I, *supra*, any claim based on Mr. Pankey's assertions are untimely and should be dismissed on this basis. Even if deemed timely, Johnson's allegations related to Mr. Pankey establish none of the Drapeau factors required to demonstrate she is entitled to any relief based upon this evidence.

First, there is no allegation that Mr. Pankey's assertions are newly discovered and were unknown to the defense at trial. On the contrary, Mr. Pankey's affidavit states that he called one of Johnson's attorneys to reveal his allegations. (Ex. 33, p.2, ¶ 5.)

Second, the evidence is not material because there is no evidence whatsoever that anyone associated with the investigation actually altered any evidence. In addition, the alleged statement that the Sheriff would have to "move" evidence is wholly non-exculpatory and innocuous.

Third, the evidence would not likely produce an acquittal because the alleged statement of the Sheriff that he has got to move evidence to make a case does not actually tend to exonerate Johnson. Taken literally the statement is that the evidence would have to be moved; in fact much of the evidence was moved, around the state and even the country. That the police wanted to "make a case" is obvious. The statement does not even imply that the Sheriff was intending to do anything other than his job of gathering the evidence and making the best case possible.

Finally, the evidence was discoverable through reasonable diligence. Mr. Pankey's affidavit at least suggests the allegation was actually known to Johnson's attorneys in that Mr. Pankey states he called Johnson's attorney and told him he had what he believed was important information. (Ex. 33, p.2, ¶ 5.) There is no allegation the evidence was not discoverable by exercise of due diligence, and, in any event, any such allegation would be affirmatively disproved by Mr. Pankey's affidavit.

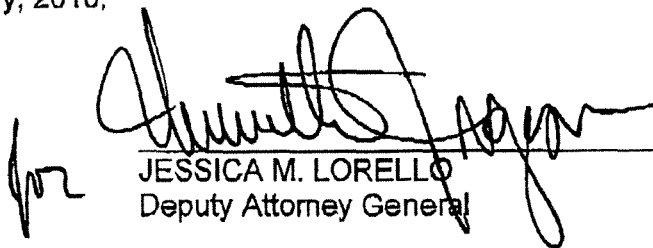
N. Conclusion

Because all of Johnson's allegations fail as a matter of law, are untimely, and/or are bare and conclusory and unsubstantiated by any fact, she is not entitled to an evidentiary hearing and this Court should summarily dismiss her Petition.

CONCLUSION

Johnson's Petition fails to raise any genuine issue of material fact that would entitle her to an evidentiary hearing. The state is therefore entitled to summary dismissal pursuant to Idaho Code § 19-4906(c).

DATED this 8th day of February, 2010,


JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of February, 2010, I caused to be served a true and correct copy of the foregoing Memorandum in Support of Respondent's Motion to Summarily Dismiss Petitioner's Second Amended Petition for Post-Conviction Relief by the method indicated below:

Blaine County Court Clerk
Fax (208) 788-5527

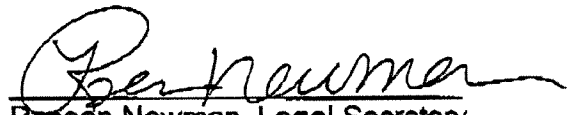
☒ Hand Delivered

Honorable G. Richard Bevan
P.O. Box 126
Twin Falls, ID 83303

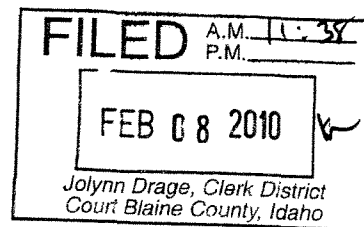
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
)	Case No: CV-006-324
Petitioner)	
)	MEMORANDUM OF LAW IN
vs.)	SUPPORT OF PETITIONER'S
)	MOTION FOR SUMMARY
STATE OF IDAHO,)	DISPOSITION
)	
Respondent)	

COMES NOW Petitioner and files this, her MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION and in support thereof states as follows;

INTRODUCTION

Pending before this Court is Petitioner's Motion for Summary Disposition of her Second Amended Petitioner for Post-Conviction Relief. The Petition raises thirty five (35) specific reasons why Petitioner is entitled to a new trial, or alternative relief, within four (4) broad categories. Those categories are; first, the District Court lacked jurisdiction; second, violations of Petitioner's constitutional right to due process of law; third, violation of Petitioner's constitutional right to effective assistance of counsel; and fourth, recently discovered material evidence which had it been known at the time of trial would have led to an acquittal.

Petitioner maintains no genuine issue of material fact exists as to any of the above referenced bases for relief and Petitioner is entitled to relief as to each contention, with the exception of the assertion made in paragraph 18.iv., (which allegation is withdrawn as not supported by the evidence) whether as a result of the specifically enumerated basis or cumulatively, as a matter of law. This memorandum of law will not address each basis for relief, but will focus for purposes of emphasis on two related issues; whether Petitioner is entitled to a new trial due to ineffective assistance of counsel in failing to adduce opinion testimony of fingerprint expert as to “freshness” of latent fingerprints found on the tools of murder and whether Petitioner is entitled to a new trial based on newly discovered fingerprint evidence. More specifically, subsequent to the trial hereof it was learned previously unidentified latent fingerprints found on the tools of murder were matched to one Christopher Kevin Hill. If this information, together with the related investigative evidence, were known to the jury during trial Petitioner would have been acquitted.

Petitioner does not abandon the additional grounds of entitlement to new trial. Each averment, and legal conclusion drawn in the verified Second Amended Petition, is presented to this court without genuine disputes as to their underlying factual source. The legal authority for each claimed basis is fully argued in the Memorandum of Law in Support of Petition for Post-Conviction Relief filed with this Court on March 17, 2009. Petitioner requests the Court consider those arguments in support of her Motion for Summary Disposition, together with the instant document.

In addition to those facts asserted and verified by the First and Second Amended Petition, and evidence offered as part thereof and/or part of the Memorandum in Support,

Petitioner now offers into evidence the Transcript of Trial and each and every item of evidence offered and admitted at the trial hereof. New Exhibits attached hereto will be numbered consecutively to those thirty four (34) exhibits submitted and attached to Petitioner's First and Second Amended Petitions for Post-Conviction Relief.

STATEMENT OF UNDISPUTED FACTS AND SUBMITTAL OF SUPPORTING EVIDENCE

On the morning of September 2, 2003 Alan and Diane Johnson were found shot to death in their home, where they lived with their sixteen year old daughter, Sarah. (Trial Transcript pp. 1512-1514, 1593-1605) Almost immediately after the rifle blasts Sarah ran from the house screaming that someone had shot her parents. (Trial Transcript pp. 1518-20) The first people at the house, initially neighbors and then police, found a gruesome scene of blood and tissue literally dripping from the walls and ceilings of the master bedroom and adjoining hallway. (Trial Transcript pp. 1593-1605, 1654-1663) Mrs. Johnson's body was found in the bed, with her head almost entirely blown off. (Trial Transcript pp. 1667-1668, 1795) Mr. Johnson's wet, naked body was found by the side of the bed, with the master bath shower running. (Trial Transcript pp. 1662, 1792) A .264 caliber rifle was on the floor in the doorway of the master bathroom. (Trial Transcript pp. 1600 & 1849, Exhibit 36)

A more complete inventory of the crime scene located a pink robe, a pair of surgical gloves, and five (5) .25 auto rounds in a trash can by the curb. (Trial Transcript pp. 1673, 1894, 1900-01, 1949-52, Exhibit 37, see also property/evidence location diagram Exhibit 35) A scope, which had been attached to the .264 caliber rifle, was found on the bed in the garage apartment. (Trial Transcript pp. 2057, Exhibit 38)

Ammunition for the .264 was found in the closet of the garage apartment. (Trial Transcript pp. 2029, Exhibit 39) In Sarah's room, across the hallway from the master bedroom, were found a leather glove, two (2) live .264 rounds, and a 9mm magazine wrapped in a red bandana. (Trial Transcript pp. 2038-2040) In the garage attached to the main house a .22 rifle was found sitting on top of a freezer with a box of .25 auto rounds, and a spent .264 casing was found on the floor. (Trial Transcript pp. 1730, 2038-49, 5705)

Further investigation revealed that one Mel Speegle was renting the garage apartment, where he normally stayed from Sunday through Wednesdays. The .264 murder weapon belonged to Mr. Speegle. Speegle moved into the apartment approximately a year prior to the murders. Speegle told police and testified he moved the .264 rifle into the apartment, and had held it and generally checked it out a few weeks prior to the murders. (Exhibit 40, Exhibit 41, Exhibit 42 & Trial Transcript pp. 2694-2721)

Sarah had been dating one Bruno Santos, an adult illegal immigrant, who had been threatened with statutory rape prosecution in the weeks prior to the murders. (Trial Transcript pp. 3358-59, 5433-34) A search of Bruno's home revealed .25 automatic rounds in the closet of his bedroom. (Exhibit 13) The surgical gloves held DNA from Sarah Johnson. (Trial Transcript pp. 3096-3110) The robe was spotted with a mixture of DNA; Mr. and Mrs. Johnson's, Sarah's and an unknown male. (Trial Transcript pp. 3436) The blood spots on the robe were from Mr. and Mrs. Johnson and the same unknown person. (Trial Transcript pp. 3438-3451) The .264 rifle, ammunition and ammunition containers, as well as the scope all had unidentified latent fingerprints which

have now been identified as those of one Christopher Kevin Hill. (Exhibit 43, Exhibit 44, Exhibit 45, Exhibit 46 & Exhibit 47)

Petitioner was convicted of two counts of Murder in the First Degree, with firearm enhancement. Petitioner is serving a life term in The Pocatello Women's Correctional Center and has exhausted her right to direct appeal. Petitioner was represented at trial by Bobby Eugene Pangburn appointed under a public defender contract with Blaine County. Mr. Pangburn is suspended from the practice of law in the State of Idaho, (Exhibit 3) and in the State of Oregon. (Exhibit 4) Among Petitioner's twenty (20) specific allegations of ineffective assistance of counsel are those described in paragraphs 18.vi. and 18.vii., dealing with counsel's failure to inquire of fingerprint expert Kerchusky his opinion whether latent prints found on the tools of murder were "fresh" and the basis for such an opinion.

It is uncontroverted Kerchusky made Trial Counsel aware of his opinion that the latent unidentified palm print lifted from stock of the .264 rifle was a fresh print. (Exhibit 15) Kerchusky's opinion was based upon statements and testimony the gun had not been touched, other than by Speegle, in approximately one (1) year. (Trial Transcript pp. 2704-2721) Trial Counsel failed to elicit testimony from Kerchusky regarding this issue. (Trial Transcript pp. 5045-5130)

It is uncontroverted Trial Counsel had knowledge of Mel Speegle's testimony, and had available to him Speegle's pre-trial statements, asserting the .264 ammunition was obtained ten years prior to the shooting and had not been opened nor gone through in that length of time. (Trial Transcript pp. 2704-2721, Exhibits 40, 41 & 42) Kerchusky made Trial Counsel aware of his opinion that these facts proved the latent prints found on

the inserts and ammunition were fresh. (*See* Kerchusky Affidavit, Exhibit 15, *See also* Kerchusky Deposition Transcript pp. 44-97) Trial Counsel never brought out this testimony nor solicited Kerchusky's opinion on the subject at trial. (Trial Transcript pp. 5045-5130, Exhibit 15)

Furthermore, during Kerchusky's comparison of the latent to latent prints he was able to identify as a match one latent print from the scope to a latent print from the insert from the box of .264 magnum ammo. Kerchusky's match of latent to latent prints was brought to the State's attention prior to trial, (an exercise the State had not previously conducted) after which the State accepted the conclusion as true. (Trial Transcript pp. 5813) It is uncontroverted Kerchusky concluded this latent to latent print identification proves the latent prints on the scope was fresh. (*See* Kerchusky Deposition Transcript pp. 44-97, Exhibit 55) Trial Counsel failed to elicit testimony from Kerchusky on this subject. (Trial Transcript 5045-5130)

At trial Kerchusky testified he concluded the unidentified latent prints on the scope removed from the murder weapon, because of their configuration, were each left by the same person. (Trial Transcript 5092-5094, 5109-5119) The State's experts dismissed Kerchusky as old and uncertified, and his opinion as unscientific. (Trial Transcript pp. 5818-5822) However, now, Kerchusky's opinion has proven correct; the unidentified latent prints on the scope were left by the same person. (Exhibits 44, 45, 46 & 47)

The previously unidentified prints found on the stock of the .264 rifle, the scope removed from the .264 rifle prior to the murder, and a plastic insert from a box of .264 ammunition were in fact the prints of a single person, Christopher Kevin Hill, an

unemployed Cook who's only alibi is self reported; that he was camping in his truck on a hill a few miles from the scene of the crime the entire summer of 2003. (Exhibit 43 through Exhibit 48) More specifically, Mr. Hill's prints, his right index finger and right middle finger, were found on the scope, which had been removed from the murder weapon shortly before the murders and found on the bed of the garage apartment; Mr. Hill's left thumb print was found on a live round inside a box of .264 ammunition; Mr. Hill's right middle finger print was found on two different .264 ammunition box inserts; and Mr. Hill's palm print was found on the stock of the murder weapon itself. (Exhibits 43 through 47)

These facts revealed themselves beginning on or prior to January 27, 2009 when Idaho State Police, apparently through use of AFIS identified a match for certain previously unidentified latent prints found on the tools of the Johnson homicides. (Exhibits 43 & 44) Correspondence commenced between ISP, Blaine County Sheriff's Department and the Blaine County Prosecuting Attorney. (Exhibit 49) A Blaine County Deputy inquired why ISP was looking into Hill, because he was investigating him as well. (Exhibit 49) On or about February 11, 2009 Blaine County Sheriff's Deputies learned of Hill's current address, and an address previously used by Hill, known by deputies as a former business address of Mel Speegle. (Exhibit 43)

On February 10, 2009, Detective Steve Harkins contacted Mel Speegle. During a February 11, 2009, interview, Speegle was informed Christopher Hill's fingerprints had been found on the scope removed from the murder weapon. (Exhibit 43) According to the police summary, Speegle then explained Hill had helped him move some of his personal items from a prior residence to the Johnson garage apartment sometime in 2002.

(Exhibit 43) The Speegle interview was recorded, a copy of which is filed herewith, and incorporated herein by reference as Exhibit 50.

On February 12, 2009, Christopher Hill was interviewed by Detective Harkins. The interview was recorded, a copy of which is filed herewith, and incorporated herein by reference as Exhibit 51. According to the Police Report, Hill told Detective Harkins he lived with Speegle at a residence on Freedman Lane in early 2000 or 2001 before Speegle moved to the Johnson garage. Hill said he helped Speegle move some personal items to his family residence in Boise. Hill did not specifically recall moving any items to the Johnson garage apartment. (Exhibit 51) Hill told Detective Harkins he took the .264 caliber rifle to a range and shot it sometime during his residence at the Freedman Lane home. Hill said he attempted to sight the rifle and touched the scope in the process. (Exhibit 51)

On March 9, 2009 Idaho State Police Forensic Services issued a *Criminalist Analysis Report – Fingerprints*. The report concluded eight (8) previously unidentified latent finger prints were in fact left on the tools of murder by Christopher Kevin Hill. Specifically, three (3) of Hill's prints were found on the scope removed from the murder weapon prior to the shooting; Hill's thumb print was left on a live .264 caliber round recovered from inside a box of ammunition; and Hill's right middle finger print was left on two separate inside plastic boxes of .264 caliber ammunition. (Exhibits 44 through 47) Five (5) latent prints were left unidentified due to incomplete known impressions from Christopher Hill. This initial Report requested a quality set of major case prints be obtained from Hill. (Exhibit 44)

On April 7, 2009, Hill was again fingerprinted by the Blaine County Sheriff's Department. (Exhibit 52) On this same date, buccal swabs were obtained from Hill. Hill's DNA was never sent off for lab testing according to the State's Response to Motion to Compel, dated November 13, 2009. An Amended Fingerprint Analysis Report was issued by ISP on June 3, 2009, only to supplement and correct the prior report because "a portion of the examination section of that report was inadvertently left out." (Exhibit 45) A second ISP Supplemental Report was issued on June 3, 2009. This second supplemental report concluded Christopher Hill's left palm print had been left on the stock of the .264 caliber rifle used to murder the Johnsons. (Exhibit 46) The report again, requested yet another quality set of major case prints due to exemplars being smudged, over and or under inked and or incomplete. (Exhibit 46)

On July 13, 2009, Mark Dalton of the Blaine County Sheriff's office transported Christopher K. Hill to ISP Forensic Laboratory in Meridan to have him fingerprinted. (Exhibit 53 & Exhibit 54) While transporting Hill back to Blaine County Officer Dalton asked Hill where he had been on the day of the murder. (Exhibit 53) Hill informed the police he had been camping in his truck, a blue 1967 Ford on a hill overlooking East Magic Road, approximately two (2) miles west of Highway 75, south of Bellevue. (Exhibit 53) Hill wrote a voluntary statement, which was later lost by police. (Exhibits 53 & 48)

ARGUMENT AND ANALYSIS

Sarah Johnson was convicted of murdering her parents by a jury who was not presented with the most critical of evidence, first due to ineffective trial counsel, and second because evidence was uncovered after trial. How is it that trial counsel could

forget to elicit opinion testimony on such an important topic? Only ill preparedness can answer that question.

INEFFECTIVE ASSISTANCE OF COUNSEL

The standards and criteria used to analyze a constitutional claim of ineffective assistance of counsel are well known and often repeated in the case law. The recent Idaho Appellate Court decision in Murphy v. State, 143 Idaho 139, 139 P.3d 741 included a clear statement of the law in a case with facts analogous to those in the instant case.

"In order to prevail on a claim of ineffective assistance of counsel, the post-conviction applicant must demonstrate both that her attorney's performance was deficient, and that she was thereby prejudiced in the defense of the criminal charge. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct.App.1995); *Davis v. State*, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct.App.1989). To show deficient performance, a defendant must overcome the strong presumption that counsel's performance was adequate by demonstrating "that counsel's representation did not meet objective standards of competence." *Roman*, 125 Idaho at 648-49, 873 P.2d at 902-03. See also *Vick v. State*, 131 Idaho 121, 124, 952 P.2d 1257, 1260 (Ct.App.1998). If a defendant succeeds in establishing that counsel's performance was deficient, she must also prove the prejudice element by showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 697. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* The benchmark for judging a claim of ineffectiveness is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 686, 104 S.Ct. at 2064, 80 L.Ed.2d at 692. It is well established that we will not attempt to second-guess trial counsel's strategic decisions unless those decisions are made upon the basis of inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation. *State v. Perez*, 99 Idaho 181, 184-85, 579 P.2d 127, 130-31(1978); *State v. Tucker*, 97 Idaho 4, 10, 539 P.2d 556, 562 (1975). Inadequate preparation prior to trial may be sufficient to show deprivation of the right to effective assistance of counsel. *Tucker*, 97 Idaho at 10, 539 P.2d at 562. Strategic choices made after incomplete investigations are reasonable only so far as reasonable professional judgments support the limitations on investigation. *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527,

2541, 156 L.Ed.2d 471, 492 (2003); *see also Rompilla v. Beard*, 545 U.S. 374, 125 S.Ct. 2456, 2463, 162 L.Ed.2d 360, 372 (2005) (failure to investigate material relied upon by prosecution was unreasonable); *Williams v. Taylor*, 529 U.S. 362, 396, 120 S.Ct. 1495, 1514, 146 L.Ed.2d 389, 419 (2000) (unreasonable failure to conduct thorough investigation); *Burger v. Kemp*, 483 U.S. 776, 794, 107 S.Ct. 3114, 3125, 97 L.Ed.2d 638, 657 (1987)” id at 747-48.

In addition to those standards and criteria referenced by the Murphy Court it should be noted that evaluating an ineffective assistance of counsel claim requires a close examination of the evidence, both the evidence which was admitted during trial and that which was not. Milburn v. State, 130 Idaho 649 at 653, 946 P.2d 71 (Idaho App. 1997) Furthermore, in assessing the potential prejudice the Court will consider in aggregate the various decisions and omissions of defense counsel that are alleged to have been unreasonable. The Court should also take into account the totality of the evidence that was before the jury in the criminal trial.

In the case before the Court it appears clear trial counsel’s performance was deficient, not only regarding failure to elicit expert testimony as to this issue, but also for the other nineteen specifically enumerated reasons. What possible strategy could trial counsel have been applying to make an informed decision not to elicit such critical evidence? In fact, counsel went about the business of asking foundational questions, and seemingly simply forgot to ask the follow up questions. To compound the mistake, the expert requested trial counsel to recall him to the stand, yet trial counsel arrogantly refused. (See Kerchusky Deposition Transcript pp. 54-55, Exhibit 55) Likewise, could counsel have conceivably been employing some sort of prepared, informed strategy in failing to lay the proper foundation for his own ballistic experts? Both Mr. Pangburn’s Co-Counsel and his legal investigator have testified he was chronically unprepared.

The second prong of the analysis is whether trial counsel's deficient performance caused prejudice. This element is satisfied by showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Can this Court be confident that the outcome was just, given this lack of presentation of absolutely decisive evidence? It must be remembered that while the Defense failed to present the opinion testimony, the State did offer expert opinion that fingerprints were not capable of accurate aging, by the appearance of the print alone. Of course, Kerchusky's opinion was not based on appearance alone, but based also on other evidence and testimony concerning the dates of handling, or lack of handling, of the murder weapon, ammunition and packaging. To further erode confidence in the conviction, Bob Kerchusky, the elder statesman of fingerprint experts in the Northwest United States, has clearly stated his opinion that Christopher Hill is the person who removed the scope from the murder weapon, and is in fact the last person to have touched the murder weapon, the ammunition and ammunition packaging.

Likewise, the State presented persuasive criminal re-enactment and ballistic tests which went completely unrefuted because Trial Counsel's performance fell below the objective standard. At best, lead Trial Counsel conducted himself questionably throughout the presentation of evidence. Petitioner argues the most egregious of these acts or omissions, those alleged here, were deficient as a matter of law. Can it be said, had trial counsel performed up to only the minimum standard, it is not reasonably likely the outcome would have been different? To further corrode confidence in this conviction, the National Academy of Sciences, in February of 2009, issued their report finding serious deficiencies in the nation's forensic system that bears directly on this

case. (Exhibit 56, full text of report can be found at http://www.nap.edu/openbook.php?record_id=12589&page=R1)

The jury was submitted an aiding and abetting instruction, but not a unanimity instruction, therefore we do not know of what conduct Sarah was found to have committed in being convicted of murdering her parents. We do know not one scintilla of affirmative evidence was admitted indicating Sarah in any way acted to facilitate, promote, encourage, solicit or incite actions of the crime. We know Sarah did not have any blood anywhere on her person. The only physical connection between Sarah and the murder was blood on the bottoms of her socks, which is explainable, and surgical gloves containing her DNA, but otherwise not physically connected to the murders. No evidence was presented that Sarah, a sixteen year old girl, had knowledge in the use of a bolt action high powered rifle. To be confident Sarah committed this crime one would have to believe she had the physical strength and skill, and the emotional fortitude to shoot her sleeping mother, point blank, hand crank and palm the round, reload and then face her father down; all without getting a drop of blood on her, in a room otherwise dripping and humid with gore.

NEWLY DISCOVERED EVIDENCE

As discussed extensively above, new fingerprint evidence surfaced in January 2009 that cuts strongly toward Petitioner's innocence. In determining whether newly discovered evidence entitles a Petitioner to a new trial the following standards are to be considered. The opinion in State v. Drapeau, 97 Idaho 685 at 691, 551 P.2d 972 (1976) contains a pertinent quotation from Professor Wright,

...rather exacting standards have been developed by the courts for motions of this kind. A motion based on newly discovered evidence must disclose (1) that the

evidence is newly discovered and was unknown to the defendant at the time of trial; (2) that the evidence is material, not merely cumulative or impeaching; (3) that it will probably produce an acquittal; and (4) that failure to learn of the evidence was due to no lack of diligence on the part of the defendant." 2 C. Wright, Federal Practice and Procedure: Criminal § 557, at 515 (1969).

The facts of Drapeau are distinguishable from those in the matter before the court, but the four part analysis is applicable. The newly discovered evidence here meets each of the four factors. The evidence was unknown at trial, due to no failure by Petitioner, is obviously material and not merely cumulative or impeaching and will probably produce an acquittal if remanded for new trial.

In Grube v. State, 134 Idaho 24, 995 P.2d 794 (2000), a post-conviction relief case, the Court applied the Drapeau test, regarding newly discovered evidence. The majority affirmed the verdict concluding the post-conviction evidence did not establish the reasonable probability of a different verdict. Justice Kidwell, joined by Justice Schoeder, dissented from the majority. The dissenting justices lacked the requisite confidence in the jury verdict, based on withheld evidence, doctored police logs, evidence that suspiciously appeared after several years, the absence of convincing direct proof. Grube at 31. The facts of the present case must lead to the same conclusion. Curiously, it appears the same lead investigator, Scott Birch, was involved, as lead investigator, in both cases. *Id* at 33.

Here, we have clearly false and misleading testimony regarding latent fingerprints offered at grand jury, then again during trial, late disclosure of critical evidence, failure by the State to diligently use its best investigative tools, and now discovery of critical new fingerprint evidence. Even after the new evidence was discovered the prosecution seemed reluctant to investigate, if not prepared to ignore it. Inadequate prints were taken

of Hill, not once but twice. ISP lab eventually had to have Hill transported to their facility because the Blaine County Sheriff's department was either unable or unwilling to gather a proper set of major case prints. Perhaps even more startling is the fact that Blaine County Sheriff's Department lost the initial written alibi statement given by Mr. Hill; an unsubstantiated alibi, for which no follow up investigation has ensued. DNA material was taken from Hill, but never sent in for testing. Again, one must ask why when we know that a blood stain on the murder weapon was from an unknown male individual. (Exhibit 57, DNA Lab Report, pg 3 of 10)

The investigation of Mr. Hill, after his prints were identified, has obviously been lack luster, at best. Viewing the recorded "investigative" interviews of Speegle and Hill demonstrate police simply failed to even attempt to gain new information. Speegle, contrary to all of his prior statements, tells police Hill moved the guns and ammunition into the Johnson apartment. In contradiction to this story, Hill recounts he took the .264 to a shooting range. Police have made no effort to verify this story. When and where did this take place? Does the shooting range have a registration or sign in? Why are Hill's prints on the scope in a pattern indicating removal of the scope from the rifle, not mere handling or sighting of the scope? How could Hill's prints still be on the tools of murder many years later, after being handled while moving them, and then handled by Speegle in the weeks prior to the murder? Wouldn't Hill's prints have dissipated or been lost due to intermediate handling? If indeed Speegle handled the murder weapon in weeks prior to the shootings why aren't his prints on the gun? The only expert opinion on the subject is from Bob Kerchusky.

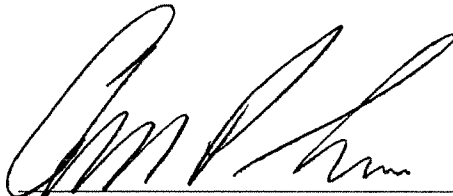
The investigation of this crime prior to identification of Mr. Hill's prints was careless and less than thorough. For example, mention is made by Speegle that Hill assisted him moving (unknown) personal items to the Johnson apartment, yet no elimination prints were obtained from Hill at that time. Assuming for a moment that it is true Hill moved the ammunition boxes and guns, why are his prints on the rounds, inside inserts, inside exterior boxes? Does one's friend in assisting in a move rummage through moving boxes?

This case presents a host of very curious and unanswered evidentiary questions; for example, the knives allegedly found around the house; the live .264 rounds, .25 mm clip and leather glove found in Sarah's bedroom; and .25 mm rounds found in Bruno's closet. The State convinced the jury Sarah was a cold and calculating teen parental murderer, yet she somehow forgot to leave her room free from such damning evidence? And now, we have a mortuary assistant who has sworn he heard the Sheriff and Prosecuting Attorney discuss moving evidence. It cannot be forgotten the State in fact destroyed at least one key piece of evidence, a comforter, thereby barring the Defense from examining the evidence or testing the state's theory regarding blood splatter.

In reviewing the allegations contained in Petitioner's Second Amended Petition for Post-Conviction Relief; the facts, law and questions presented in this memorandum; the many obvious instances of ineffective assistance of counsel, and the totality of the circumstances contained in the record; it seems clear that Petitioner would not have been convicted if ably represented by counsel presenting all of the facts and all of the arguments to a jury. Justice demands Petitioner be granted a new trial.

WHEREFORE, for any or all of the foregoing reasons, Petitioner prays this honorable Court enter its order setting aside, reversing and vacating the verdict, judgment and sentence of this Court in State v. Johnson Case No. CR-2003-1820 and remanding the case for new trial or alternatively for such other and further legal and/or equitable relief as the Court deems just and proper under the circumstances.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW



CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

2.8.10

DATED

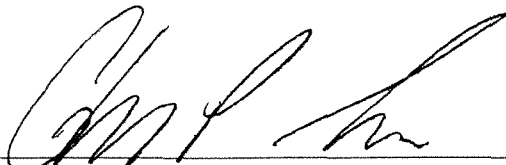
CERTIFICATE OF SERVICE

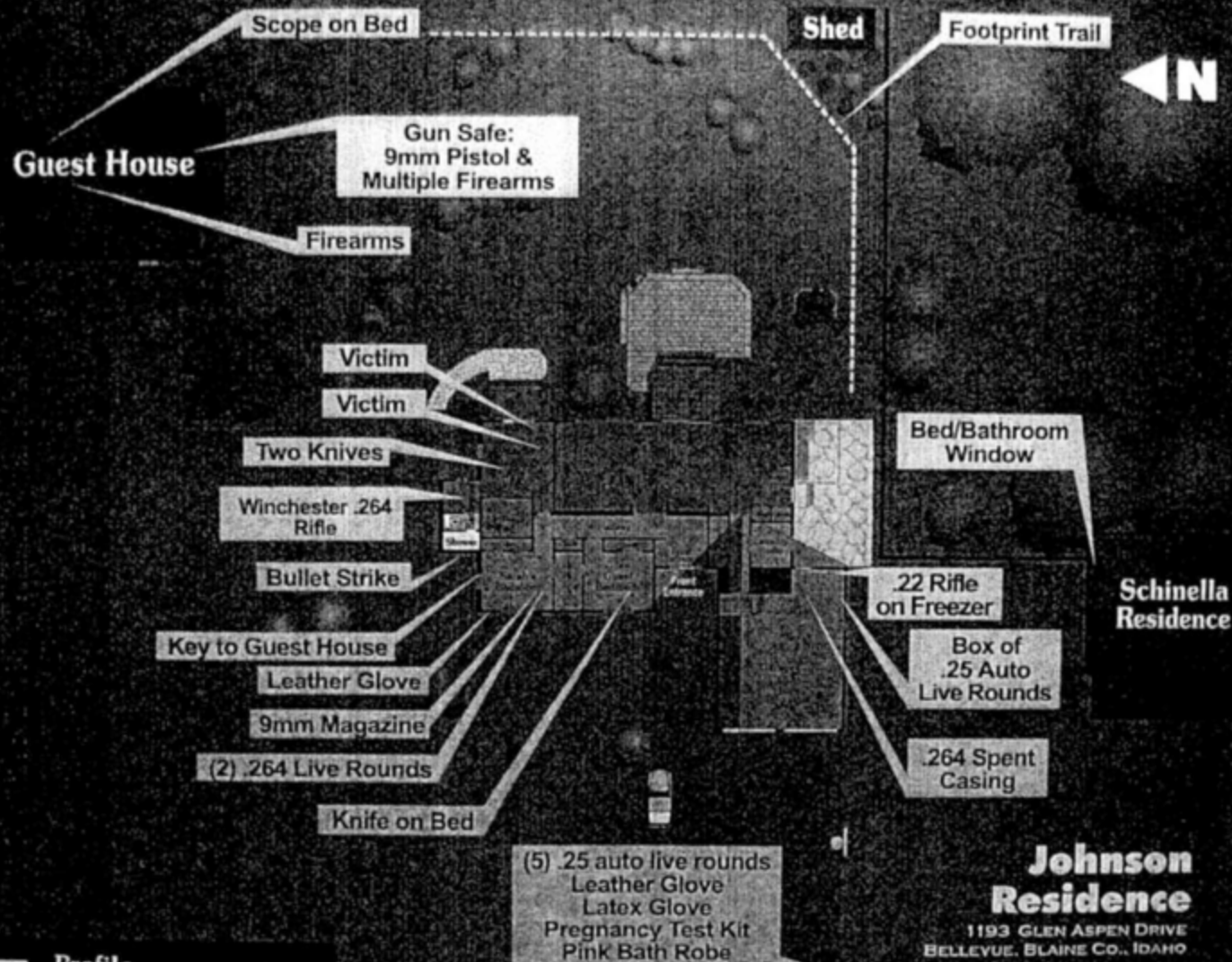
I HEREBY CERTIFY that on the 8 day of FEB 2010, a true and correct copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello; Facsimile number 208.854.8074; PO Box 83720, Boise, Idaho 83720-0010; The Office of the Blaine County Prosecuting Attorney; Facsimile number 208.788.5554; 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333; and Chambers Copy for the Honorable G. Richard Bevan, Facsimile number 208.736.4155, PO Box 126, Twin Falls, Idaho, 83303-0126.

☒ US Mail

☐ Hand Deliver

☐ Via facsimile 208.854.8074; 208.788.5554; & 208.788.4155


CHRISTOPHER P. SIMMS





PLAINTIFF'S
EXHIBIT
37

Exhibit 37
March 1, 1984



PLAINTIFF'S
EXHIBIT
38

Exhibit 38
Name: [illegible]
Date: [illegible]



PLAINTIFF'S
EXHIBIT
39
Bulmer, No. 5113

Admitted to the
Court of Appeals
for the Fifth Circuit
on 11/11/10
JAC



1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

3
4 STATE OF IDAHO,)
5 Plaintiff,)
6 vs.)
7 SARAH MARIE JOHNSON,)
8 Defendant.)
9



Case No. CR-2003-18200

CONFIDENTIAL

10
11
12 REPORTER'S TRANSCRIPT OF GRAND JURY PROCEEDINGS
13

14 The above-entitled case came on for hearing before the
15 Grand Jury of Blaine County on Tuesday, October 28, 2003, at the
16 hour of 9:00 a.m., at the Blaine County Courthouse, Hailey,
17 Idaho.
18

19
20 APPEARANCES:

21 For the State: JIM J. THOMAS, ESQ.
22 JUSTIN WHATCOTT, ESQ.
23 Blaine County Prosecuting
24 Attorney's Office
25 201 2nd Avenue South
Suite 100
Hailey, Idaho 83333

ORIGINAL

1 people or hunters, what type of gun is that? Is that a rifle or
2 a shotgun?
3 A. It's a rifle, deer rifle.
4 Q. Is that what a .264 would be used for is deer
5 hunting?
6 A. Yes.
7 Q. So what other type of rifles did you have?
8 A. An old .30-40 Craig 1898 issue that my grandfather
9 gave me.
10 Q. What else?
11 A. There was a 20-gauge shotgun and, also, a .22 bolt
12 action.
13 Q. So a shotgun, again, for people that don't know
14 guns, what's the difference between a shotgun and a rifle, do
15 you know?
16 A. I'm not a real gun man, but I know what the
17 difference is, but what do you want me to portray to them?
18 Q. Well, I'm just wondering, what would you commonly
19 use a shotgun for?
20 A. Birds -- birds, close range.
21 Q. What about a .22, what would you normally use a .22
22 for?
23 A. Usually plinking or playing.
24 Q. And how long have you had those rifles?
25 A. Well, the .22 I think I've had since I was a kid;

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1 the .30-40 Craig my grandpa gave me probably 30 years ago; the
2 shotgun my dad gave me probably 12 years ago; along with the
3 .264 Magnum my dad gave me.
4 Q. Where in your apartment, and if you could again
5 access that diagram, did you keep those guns?
6 A. I kept the guns right here.
7 Q. And so you're pointing --
8 A. In the corner of the closet.
9 Q. Into the closet area, okay.
10 Does that closet have doors on it?
11 A. Bi-fold doors.
12 Q. You can go ahead and set the diagram down if you
13 would like.
14 A. (Complies.)
15 Q. Now, explain how they were in the closet. Were they
16 in any sort of gun safe or anything like that?
17 A. No, I kept these guns just in the corner of my
18 closet. They were covered with clothes and a robe or something.
19 Q. And if you walked into that bedroom, assuming that
20 the closet doors were open, were the guns easily seen? Were
21 they out in plain view?
22 A. No, not in plain view.
23 Q. Now, was there any sort of a lock on that closet?
24 A. No.
25 Q. Now, since September 2nd and the incident that

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1 happened then, have you been back in that apartment?
2 A.
3 Q. Have you noticed whether all your guns are still
4 there?
5 A. They're not all there, no.
6 Q. Which guns are missing?
7 A. There is a shotgun there.
8 Q. Okay.
9 A. I believe that's it.
10 Q. Okay. So the .30-40 Craig, is that still there?
11 A. Oh, the .30-40 Craig, that's there. That was never
12 taken out.
13 Q. The shotgun, is that still there?
14 A. The shotgun and the .30-40 Craig.
15 Q. How about the .264, is it still there?
16 A. No.
17 Q. What about the .22, is it still there?
18 A. No.
19 Q. I would like to hand you a photograph now that's
20 been marked as State's Exhibit No. 11. Just go ahead and trade
21 me here.
22 Do you recognize the rifle depicted in that
23 photograph?
24 A. Yes, I do.
25 Q. What rifle is that?

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1 A. That's my .264 Magnum.
2 Q. And so does that picture accurately depict your .264
3 Magnum?
4 A. It's missing the scope.
5 Q. Okay.
6 Now, prior to September 2nd, when was the last time
7 that you had seen the .264?
8 A. About two weeks before I looked in the closet. The
9 Johnsons were going to have a wedding at their property, and I
10 just thought I might see what my arsenal looked like and make
11 sure it was covered, and it was.
12 Q. And so did you put that rifle back into the closet?
13 A. Yes.
14 Q. And was it in any sort of a scabbard or a case or
15 anything like that, the .264?
16 A. No.
17 Q. And you said it had a scope on it the last time you
18 saw it. What type of a scope was it?
19 A. I'm not a real scope person. I don't know.
20 Q. Just the type of scope that went on top of the gun?
21 A. Right.
22 Q. I'm going to hand you a couple more pictures. These
23 are Exhibits 41 and 42. First, looking at the first one that is
24 State's Exhibit 41, what is that a photograph of?
25 A. That's a photograph of what appears to be a scope or

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1 my bed.
2 Q. And you say on your bed. Is that the bed in the
3 guest apartment?
4 A. Yes.
5 Q. And so does that photo truly and accurately depict
6 the bed as it was in your guest apartment?
7 A. Yes.
8 Q. And so just looking at that picture, can you
9 determine if that's the scope that was on your .264?
10 A. It looks very similar, yes.
11 Q. If you could, look at the next photo, State's
12 Exhibit 42. What is a picture of?
13 A. That's the scope. It had covers on it just like
14 mine.
15 Q. Does that exhibit accurately depict the scope that
16 was on your .264?
17 A. Yes.
18 Q. Now, prior to September 2nd did you ever take off
19 that scope?
20 A. No.
21 Q. So you didn't leave it on the bed like that?
22 A. No.
23 Q. I would like to hand you State's Exhibit 37. Do you
24 recognize that photo?
25 A. It appears to be my .22 rifle.

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1 Q. And do you recognize that area that the .22 is on?
2 A. This is the Johnsons' garage, the back of the
3 garage, in their house, the main house.
4 Q. So does that photo truly and accurately depict your
5 .22?
6 A. Yeah.
7 Q. And if you could, just to remind me, where was the
8 last time that you saw that .22?
9 A. It would have been in my closet.
10 Q. And so you didn't take the .22 into the Johnson
11 house?
12 A. No.
13 Q. Now, did you have any ammunition in your apartment?
14 A. Yes.
15 Q. If you could explain where that ammunition was kept.
16 A. That ammunition was also in the closet. It was to
17 the left-hand side of the closet and it was underneath -- again,

18 it was stacked up and underneath things, so someone who opened
19 the closet door would not think much of anything about the
20 closet.
21 Q. So the ammo wouldn't be easily seen by someone who
22 was just standing outside the closet?
23 A. No.
24 Q. To your knowledge do you recall whether there was
25 .264 ammo in there?

1 A. The .264 ammo there, yes.
2 Q. And is that ammo that you had purchased for your
3 .264?
4 A. Yes.
5 Q. Do you know whether there was any .25 auto ammo in
6 there?
7 A. I've been asked that. I didn't know I had any.
8 Q. Where did you get this ammo? Did you buy some of it
9 yourself?
10 A. My dad gave me -- like I say, he gave me the guns
11 and he also gave me some ammunition and there's some reloading
12 materials there. I'm not a real gun person, so I don't know
13 what all I have, but it was all in one spot.
14 Q. To your knowledge prior to your dad giving you this
15 ammo, did he own the .25 auto?
16 A. Yes.
17 Q. So is it possible that there was .25 auto ammunition
18 in that box?
19 A. Conceivably, yes.
20 Q. I'm going to hand you State's Exhibit 40, another
21 photograph. Do you recognize that photo?
22 A. This is a photo of my closet and some ammunition.
23 Q. And does that photo truly and accurately depict the
24 ammunition sitting in your closet there at the guesthouse?
25 A. Not the way I left it.

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1 Q. Okay. If you could, you've got a laser pointer
2 there right in front of you, and you might have to stand up to
3 use it.
4 A. You've got to be smarter than the laser. Trust me,
5 I don't know how to use this.
6 Q. There's a little button there on the side.
7 A. Glasses first.
8 All right. What do you want to know?
9 Q. If you could, explain in that photo whether you can
10 see the closet door.
11 A. This is the closet door.
12 Q. Looking down there kind of in the center bottom, it
13 looks like there's a round cylinder. What is that?
14 A. That, I believe, is a part of my dad's reloading
15 things that he gave me. It might even be powder, I'm not sure.
16 I believe it's not. I believe it's wads and things.
17 Q. It also looks like there's a white and red cardboard

18 box kind of there to the middle. Is that the box that the
19 ammunition was in?
20 A. Oh, this box here?
21 Q. Yes.
22 A. I believe so, yes.
23 Q. And so looking there at the middle, there's some
24 boxes of what appears to be ammunition. Is that how you last
25 left those boxes of ammunition in that closet?

Supplement Report
Case #Q030900016



Deputy Rod Gregg
Blaine County Sheriff's Office
RE: Interview with Dell Speegle
09-03-03

On 09-03-03 I conducted an interview with Dell Speegle at the Blaine County Sheriff's Office, regarding the investigation of the homicides of Alan Johnson and Diane Johnson. Speegle agreed to the interview voluntarily. Speegle rents the guesthouse next to the Johnson's residence. Dell Speegle indicated to me that he also goes by the name of "Mel Speegle".

During the interview I asked Speegle if he knew Alan and Diane Johnson. Speegle stated that he has been a close friend of the Johnson's for approximately ten years, and he currently rents a guesthouse at the Johnson's residence at 1193 Glen Aspen Road. Speegle stated that he lives with his family in Boise but he owns an electrical contracting business in Bellevue, which requires him to stay at the Johnson's guesthouse during the weekdays. Speegle normally arrives in Bellevue on Sunday nights, and he stays at the guesthouse until Thursday afternoon. I asked Speegle if he was at the guesthouse on the morning of 09-02-03. Speegle stated no, he had stayed in Boise with his family for the Labor Day weekend, and left Boise to come to Bellevue Tuesday morning at approximately 5:45 am. I asked Speegle if anyone saw him leave his residence in Boise. Speegle stated that both his wife and son were asleep when he left his residence. Speegle stated that he told his wife goodbye before he left, but he was not sure if she heard him leave. Speegle stated that his neighbor, Katie Metzger, did see him as he was leaving his residence.

I asked Speegle if he could give me times and locations of places he may have stopped on his way to Bellevue on the morning of Tuesday, September 2. Speegle stated that he left his residence at 3512 N. Tamarack Drive in Boise at approximately 5:45 am. He then drove to the Stinker Station Convenience store on Broadway Ave. where he used his credit card to buy fuel. Speegle then drove to Starbucks coffee shop at the corner of Park Center and Broadway where he used cash to buy coffee. Speegle then drove down Broadway Ave. to Interstate 84 to drive to Bellevue. After leaving Boise Speegle stopped in the Pilot gas station parking lot in Mountain Home, and he made a cell phone call to his employee, Billy Reed. Speegle stated that he spoke to Reed for approximately five minutes. Speegle then drove directly to the Johnson's residence. Speegle also stated that as he was driving he was listening to the radio. As he was driving past the Moonstone Ranch area on Highway 20 he heard a news broadcast by Gary Stivers from KECH Radio. In the broadcast he heard Stivers describe a shooting incident that had occurred at the Johnson residence at 1193 Glen Aspen Road. Speegle became worried

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and drove directly to the Johnson residence, where he spoke to Sheriff Walt Femling and Captain Ed Fuller.

As I was interviewing Speegle, he telephoned his wife, Helen Speegle, so I could verify when Dell left his residence on the above-mentioned morning. Helen stated that on the morning of 09-03-03 she was awakened by her husband as he was leaving their house. Helen heard Dell let their dog outside and then leave the residence. Helen stated that she looked across the bedroom at the cable television box and the time displayed was approximately 6:00 am. Helen also stated that her neighbor, Katie Metzger, had told her that she saw Dell leaving the residence that morning.

I asked Dell if he had been informed that a rifle belonging to him had been used in the above homicide, and he stated yes. Dell described the rifle as a .264 Magnum rifle with a scope. Dell stated that he had kept the rifle in a soft gun case in an upstairs closet in the Johnson guesthouse. Dell also stated that he kept two other rifles in the upstairs closet; he described them as a 34-40 Krag rifle and a bolt-action .22 caliber rifle. Dell also stated that he had recently placed a metal box of miscellaneous ammunition in the closet with the rifles. I asked Dell if anyone else knew that the rifles were in his closet, and he stated that Alan Johnson knew about the rifles and he believes that Diane Johnson and Diane and Alan's daughter Sarah Johnson also knew about the rifles. Dell stated that he had been in the closet approximately two weeks ago and all three of the rifles were in the closet at that time.

I asked Dell who had routine access to his residence at the guesthouse. He stated Alan Johnson, Diane Johnson, and Sarah Johnson. Dell stated that Alan and Diane had access to the guesthouse because they are the owners, and Sarah has access to the residence because he had paid her on several occasions in the past to clean the residence while he is away. The last time Sarah cleaned the residence for him was approximately four months ago. Dell stated that Sarah also parks her vehicle in the garage of the guest house during the winter. Dell also stated that the Johnson's had a family wedding at their residence on the weekend of August 25th, 26th, and 27th. Dell believed that the bride and groom stayed in the guesthouse, and other family members may have also been inside the guesthouse. Dell stated that it did not appear that any one had been in the guesthouse to clean after the wedding. Dell was not at the residence during the time of the wedding.

I asked Dell if he had locked the residence the previous Thursday when he returned to Boise. Dell stated that he did lock the front door, but he was not sure about the back door of the guesthouse. The back door of the guesthouse is blocked by various garden supplies, ladders, and other construction equipment, and so the back door is not accessible. Dell stated that access can be gained to guesthouse by the front door and the garage door.

SUPPLEMENT: 10-10-03

On 10-09-03 Dell voluntarily supplied me with copies of his Discover Platinum credit card statement and his Edge Wireless cellular phone bill record; both documents were for

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the month of September 2003. The Discover credit card statement contained a transaction record for September 02 in the amount of \$32.07 at a Boise Texaco convenience store. The Texaco Store's identification number is #24664664655220035. The time of the credit card transaction was not listed on the statement.

Dell's Edge Wireless cellular phone record contained an outgoing call at 6:50 am on September 02 from Dell's cellular phone to another Edge Wireless cellular phone with the number of 208-309-1280. This is the active number of Billy Reed's cellular phone. The statement indicates that the call was made by Dell in Elmore County and was received by Billy Reed in the Ketchum area.

Both of the above statement copies are attached to this report.

On 10-01-03 I interviewed Billy Reed at The Blaine County Sheriff's Office. Billy Reed agreed to the interview voluntarily. During the interview I asked Reed if he received a cellular phone call from Dell on September 02. Reed stated that he did receive a call on his cellular phone from Dell on September 02 at approximately 6:45 am. Reed stated that he remembers the date of the call because it was the day after the Labor Day weekend, and because it was the day of the homicides. Reed stated that during the phone call Dell told him he was in Mountain Home and he would be in Bellevue in about an hour. Reed also filled out a voluntary statement after the interview.

On 10-10-03 I interviewed Dell's neighbor, Kathryn Metzger, by telephone. During the interview I asked Metzger if she saw Dell leaving his residence on the morning of September 02, 2003. Metzger stated that she did not actually see Dell that morning, but she did see his vehicle running in his driveway as she was leaving her home to go to a fitness class. Metzger stated that she left her home at approximately 5:30 am to 5:45 am. Metzger described Dell's vehicle as a black Toyota Land Cruiser. Metzger stated that she remembered the above date because Dell stayed home for the Labor Day weekend, and because it was the same day that Dell's wife told her about the murders.

Dell Speegle
3512 N. Tamarack Dr.
Boise, ID 83703
Local Business (208) 788-7836
Cellular phone (208) 309-1041
Boise residence (208) 383-0566

William Z. Reed
934 Conant St.
Boise, ID 83703
Burley ID 83318
Cellular phone (208) 309-1280
Home phone (208) 678-5561

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Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
Case No.: 2003-021
Transcribed By: Marilyn Freeman and Fran Nix
Revised By: T. Michael Dillon
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MS: Probably three months.

MD: And did you pay her for it?

MS: Yes.

MD: How much?

MS: I believe it was 35 bucks. I have a record of that.

MD: Do you?

MS: Yeah.

MD: Uh ...

MS: She had ... she cleaned my office, also. And I had it uh ... I had my office just pay the check.

MD: And your office is located ...

MS: Buckhorn Electric in Bellevue.

MD: Okay. Okay. How long have you had the guns ... how long since your ... when did your dad give them to you?

MS: Do you want ... start ... start with the .264 magnum. That was given to me probably twelve years ago.

MD: Okay.

MS: 'Cause I was ... I was thinking about doing some hunting and that's about the last time I remember that I went hunting was twelve years ago.

MD: [inaudible] .22?

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
Case No.: 2003-021
Transcribed By: Marilyn Freeman and Fran Nix
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MS: .22 ... I think I've actually had that ... 'cause I think that's the gun I probably had when I was in high school and ... I believe.

MD: Okay. How about the shotgun?

MS: Shotgun I've had probably since '85. My dad gave me that at the ranch.

MD: Did your dad give you the ammunition, too? Or do you think you bought [inaudible]?

MS: I probably ... I, I bought, I believe I bought the .264 magnum because when I was hunting I wanted to make sure I had plenty of rounds. Uh, the rest of the ammunition, I don't remember buying much of anything for any of my guns.

MD: Did your dad give you any ammun-, any ammunition?

MS: Well, it appears that all this ammunition in this closet was given to me, other than possibly the .264 magnum that I bought, so yes.

MD: Right. Okay. And your dad was a member of Bi-Mart, I presume?

MS: Yes. And he was a member of the NRA.

MD: Um, was the scope on the rifle, did you put the scope on it?

MS: Yes. Scope's never been off of the rifle since I've had it.

MD: What sort of ... I know they have this scope, and I've seen a picture of it, uh 'cause it was found on your bed. How easy or difficult was it to take off the scope?

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
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MS: I have never taken that scope off. I don't know. Uh I, I, I have taken scopes off before. Usually takes some kind of a screwdriver ... it takes ten minutes to get the thing off. Five minutes. Whatever you need to get a screwdriver. You need to deal with it.

MD: Sure.

MS: But it's not something you just walk up and ... click, click you get it off.

MD: And that ... would that apply to your scope?

MS: I believe so. I haven't seen my scope, so I can't remember.

MD: You don't remember ...

MS: I never, ever took it off. I never had my scope off my gun.

MD: When you bought it, the scope was on it?

MS: Correct. When my dad gave it to me, it was on it. That's the gun my dad gave me.

MD: The .264?

MS: Correct.

MD: I thought you ... oh [inaudible], oh, I'm sorry. Twelve years ago he gave you that gun.

MS: Yes. Correct.

MD: Okay. And it had the scope on it?

MS: Correct.

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
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MD: Okay. All right. [inaudible] [tape skips a bit] I know ... [inaudible]. It's still moving. Yeah its still moving. Can't be the equipment [inaudible]. Uh, besides yourself, did anybody else handle the uh, or let me go back. Did you handle the gun? Did you ever have any reason to bring it out?

MS: Sure.

MD: The .264?

MS: Sure. I ... it's, it's coincidental. I ... two weeks before the wedding ... I don't remember the exact dates, but I remembered I, I was concerned about getting these guns into the safe. And I just remembered looking, I just wanted to kind of assess what I had there, and I remembered reaching in and I pulled that .264 magnum out of its sheathing or the uh scabbard, whatever it is. And I just held it. And I remembered holding it and sticking it back in there.

MD: Is the scabbard still here?

MS: I ... I remembered it being in the scabbard. And I'm, I'm this is where I'm getting fuzzy because I, I see there's a gun in my scabbard right now. And I don't know what gun that is. So I would ... I did not leave my .264, my beautiful, gorgeous .264 with the dust laying all around it. It would have been in the case.

MD: Okay. Let me turn off. The time is uh 10:35. I'm going to turn the tape recorder off, and let's go take a look at the scabbard.

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Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
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MD: Okay. The time now is 10:42. We just went into the closet, pulled the scabbard uh out and it contained a shotgun, the shotgun that you had earlier referred to.

MS: Right.

MD: And as we looked at it, uh your recollection became a little more clear.

MS: Yes.

MD: And why don't you explain now what you know to be, or believe to be the case, as opposed to what you said earlier.

MS: Right. Uh, upon seeing this uh, what is in that scabbard, which is the shotgun. Which brings to my memory now is that I didn't really remember what was in that scabbard, and I also remembered the .264 magnum uh that I was worried about it getting dust down the barrel and my dad would think oh, my gosh, I haven't taken care of my rifle. So I do remember that the .264 was not in the scabbard.

MD: And it was ... and the shotgun was.

MS: Correct.

MD: We've determined now that it was a shotgun.

MS: And that also explains why I couldn't remember what's in there, whether it was a .22 or a ...

MD: Right.

MS: [inaudible]

MD: So, the only thing sticking out of the scabbard was the uh portion ...

Interview Of: Mel Speegle
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MS: Right.

MD: ... butt end.

MS: Yeah.

MD: Okay. All right. So that ... the .264 caliber was out of the scabbard, in plain view, if you went and looked into the closet, you'd see a .264.

MS: Behind clothes. There were clothes.

MD: [inaudible] Okay. Now, I guess I'm going to ask a question again ... besides yourself, who knew that those weapons were in the closet?

MS: Alan and Diane are the only people specifically that would have known they would have been in there.

MD: In the closet?

MS: In the closet.

MD: Or ... now, as we talked earlier, when you suggested or discussed putting the guns in Alan's new safe ...

MS: Yes.

MD: Uh, did you tell Alan then or had, had he known just through the course of your coming here, [inaudible] in your routine discussions that you had weapons in the safe, or in the closet?

MS: Alan knew that they were in the closet.

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
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MD: Okay. Now, again, I asked before, but let me ask it one more time. When you discussed turning the guns uh over to Alan to put in his new safe, you remembered having that conversation and, and that Sarah was present?

MS: Yes.

MD: Do you remember alluding or referring to the fact that they were in your closet?

MS: Only just that Alan had mentioned that it would be a good idea to get them in a safe because of kids or somebody might accidentally get in there.

MD: Okay. But nothing to the effect that the guns in your closet should be in my safe, you might consider putting the guns, taking them from your closet and putting them in my safe, something along those lines?

MS: It was just the first chance that I had to put my guns somewhere where I felt safe.

MD: But in this conversation, did Alan say ... do you recall Alan saying ... this is the conversation where you remember Sarah was present?

MS: Yes.

MD: Do you remember Alan saying it might be a good idea to take the guns from your closet and put them in the safe?

MS: Yes.

MD: Did he say from the closet?

MS: I think he would ... I think he said from the apartment.

MD: From the apartment?

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
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MS: Yes.

MD: Okay. You feel ...

MS: Yes, I feel comfortable with that.

MD: Okay. Okay. And Sarah was present.

MS: There's no other place to hide it but the closet, so do the math.

MD: Correct. But Sarah was present?

MS: Yes.

MD: Okay. All right. Did anybody else know about the guns besides Alan, Diane, and Sarah?

MS: I have no knowledge ...

MD: Presumably Sarah.

MS: I have no knowledge of anyone else knowing they're there.

MD: Okay. And besides Alan and Diana, uh and Sarah and Reed, did anybody else have access to your apartment, either by key or by the code to the garage door opener?

MS: Not that I know of.

MD: Okay. And that scope on the .264 was on it when your dad gave it to you, which is you said, ten years ago?

MS: At least.

MD: Ten, twelve years ago?

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
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MS: Yes.

MD: It was on ... did you ever take the scope off?

MS: Never.

MD: And, you're not aware that it would require a tool to take it off? Could it have been a scope that was, you could snap on, slide it into a position?

MS: Again, I haven't seen the scope ever off and frankly I haven't seen my gun for quite sometime now, for the last few months, or months here, so I ...

MD: Right. But when you took it out, you indicated you took it out to uh ...

MS: Correct. I did ... I did look at it.

MD: Was it five or six ... a week or so before the wedding?

MS: Correct.

MD: And what kind of condition was it in then?

MS: Beautiful condition.

MD: Scope was on it?

MS: Yes.

MD: Did you aim it, and look through the scope?

MS: Sure. I just ... like picked it up and kind of held it. I didn't aim it. I just held it.

MD: Okay. Okay.

MS: Just to get the feel of it.

MD: Okay. Okay. Nobody else knew about the guns, besides Alan ...

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Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
Case No.: 2003-021
Transcribed By: Marilyn Freeman and Fran Nix
Revised By: T. Michael Dillon
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MS: No.

MD: Okay. Did Reed know about the guns?

MS: No.

MD: Who helped you move in here?

MS: Um ... a guy by the name of uh ... actually, the only person that helped me with this ammunition would have been ... that's the only thing he helped me move in. I moved everything myself. Chris Hill. He used to work for me. And he used to caretake my ranch for four or five years.

MD: Okay. Did you ever go hunting with the Johnsons?

MS: No.

MD: And you've lived here for how long?

MS: I've lived in this valley since '80.

MD: In this apartment?

MS: I've lived in this apartment about a year.

MD: Okay. What kind of social interaction did you have with the Johnsons, with Alan and Diane?

MS: Um ... I would be invited over to dinner occasionally. Uh the last ... six months I probably got invi- ... that last four months I probably got invited at least once a month. [cell phone rings] Just keep going. I'll get rid of this one. Okay.



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE

CASE - INITIAL REPORT

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 1 of: 2

Incident Case Number BCSO0902-0028 Report Title AFIS INFO FROM ISP LAB
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/11/2009 08:13 AM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code OFF CSA COMMITTED Location RESIDENCE/HOME
Description OFFICER REPORT



Person

Person Type WITNESS
Name Type LEGAL Last SPEEGLE First MEL Middle _____
Address Type HOME Address 3512 N TAMARACK DRIVE Apartment _____
City BOISE State IDAHO Zip 83703 Phone (208) 309-1041
DOB 9/6/1951 Age 57 Sex MALE Race WHITE Height 509 Weight 190
Hair Color BROWN Eye Color BROWN Driver License FA113513C State IDAHO

Person Type ADDITIONAL PERSON
Name Type LEGAL Last HILL First CHRISTOPHER Middle K
Address Type HOME Address 46 EAST MAGIC ROAD Apartment _____
City BELLEVUE State IDAHO Zip 83313 Phone (208) 788-7836
DOB 12/6/1956 Age 52 Sex MALE Race WHITE Height 600 Weight 200
Hair Color GRAY/PARTIALLY GRAY Eye Color BLUE Driver License FA118636F State IDAHO

Property

Item No 2 Code _____ Article NONE Make _____ Model _____
Description EXHIBIT #1 IS DESCRIBED AS A Serial No _____ QTY _____ Value _____
Item No 3 Code _____ Article NONE Make _____ Model _____
Description EXHIBIT #2 IS DESCRIBED AS A Serial No _____ QTY _____ Value _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: Case #- BCSO0902-0028
Johnson Homicide- Case #- BCSO 0309-0016

Identification of fingerprint from the Automated Fingerprint Identification System 'AFIS'

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFF.

CASE - INITIAL REPORT

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 2 of: 2

On 2-10-09 I was notified by Sheriff Femling that a fingerprint had been identified by AFIS on a piece of evidence in the Johnson homicide Investigation that occurred in September of 2003. Randy Parker, a supervisor from the Idaho State Laboratory in Meridian, Idaho, notified Sheriff Femling he had received information that a previously unidentified fingerprint found on the rifle scope of the murder weapon now had been identified to a person in the AFIS system. This person was identified as Christopher Kevin Hill (DOB- [REDACTED], SOC- [REDACTED]).

On 2-10-09 I began a background check on Hill. From a previous arrest for a driving without privileges charge on 3-1-2007, I learned he listed the address of #46 East Magic Road in Blaine County. Prior to that he was arrested for DUI on 12-5-02 and listed an address of 614 South Main Street in Bellevue, Idaho. I know that 614 South Main Street is the address to the Buckhorn Electric Company. I know that the Buckhorn Electric Company was previously owned by Mel Speegle, a key witness in the Johnson homicide investigation who lived in the Johnson guest house.

See included jail booking reports and criminal history printout for Hill.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-786-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 1

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 1 of: 3

Incident Case Number BCSO0902-0028 Report Title INTERVIEW OF MEL SPEEGLE
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/11/2009 12:01 PM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: Case #- BCSO0902-0028
Johnson Homicide- Case #- BCSO 0309-0016

Interview of Mel Speegle

On 2-10-09 I contacted Mel Speegle by telephone. It should be noted that Speegle was a witness in the Johnson Homicide Investigation and was the person who lived in the Johnson guest home at the time of the murders. After learning that a fingerprint had been identified on a piece of evidence in the Johnson investigation by 'AFIS' belonging to Christopher Hill, I began an investigation. (See initial report). Christopher Hill listed an address of a former business owned by Mel Speegle, Buckhorn Electric. I called Speegle to set up an interview with him. During the short phone conversation, I asked Speegle if he knew a subject named Christopher Hill. Speegle told me he did and he had been a friend of his for many years. Speegle also mentioned that Hill had rented a room from him at a former residence, 116 Freedman Lane. This was his residence before he moved into the Johnson guest house in 2002. Speegle also explained Hill helped him move his personal items from his former residence into the Johnson guest house. I arranged to meet with Speegle the following morning.

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-786-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 1

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 2 of: 3

On 2-11-09 at approximately 0930 hours I met with Speegle in an interview room at the Blaine County Sheriff's Department. There, I explained to Speegle the reason why I was inquiring about Hill. I informed Speegle that a fingerprint identified to Hill had been identified on a piece of evidence from the Johnson Homicide Case. Specifically, I told Speegle Hill's print had been identified on the rifle scope that had been found on his bed in the guest house after the murders. Speegle explained he has known Hill for approximately 15 to 20 years and was first introduced to him by his wife. He explained his wife had been family friends with Hill prior to their marriage. Speegle described Hill as a good person and a distant friend and he has not had contact with him in three to four years. Speegle explained before he moved into the Johnson guest house he owned the home south of Bellevue, Idaho. He estimated that Hill resided at this house for approximately three years, from 1999 to 2002. Speegle recalled moving into the Johnson guest house in September of 2002, after selling the above residence. During those three years, Hill resided and performed caretaking duties for him. Speegle never recalled an issue or problem with Hill's character or responsibilities. Speegle explained that Hill helped him move many of the items to his new family home in Boise, Idaho. I asked Speegle specifically about the guns and ammunition that had been found during the search of the Johnson guest house and if they had been previously kept in his residence on Freedman Lane. Speegle confirmed that all the guns and ammunition were that of the same that they had moved. Speegle explained he did not move the guns and ammunition to his new Boise residence because he did not reside there full time with his family. Furthermore, Speegle did not want unsecured guns and ammunition at the new house where only his wife and younger son lived. Because of this, Speegle moved the guns and ammunition into the Johnson guest house.

Speegle told me he recalled Christopher Hill helping him move the guns and boxes of ammunition into the Johnson's guest house sometime in approximately 2002. Specifically, Speegle recalled one of the guns being the 264 Caliber Winchester rifle and scope. It should be noted that this was the murder weapon used in the Johnson homicides. Speegle explained this is why Hill's fingerprints were found on the guns or ammunition. Speegle did not know of any involvement between Allen or Diane Johnson and Hill, socially or business related. He did not believe they knew one another. Speegle recalled that once he moved out of his house and into the Johnson's guest house, he recalled Hill stopping by on one occasion. He remembered this a short visit and that Hill just stopped by to say, "hello". I concluded the interview with Speegle.

This interview was recorded and will be contained on a DVD.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 1

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 3 of: 3

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 2

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 1 of: 2

Incident Case Number BCSO0902-0028 Report Title INTERVIEW WITH CHRISTOPHER HILL
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/12/2009 11:39 AM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: BCSO-0902-0028
Johnson Homicide Investigation
Interview of Christopher Hill

On 2-12-09 I interviewed Christopher Hill at the Blaine County Sheriff's Department. The interview occurred in an interview room. I explained to Hill that his fingerprint was found on a piece of evidence from the Johnson homicide case. Hill explained he is family friends with Mel Speegle and his wife, Helen Speegle and therefore he knew who the Johnson's were. Hill told me he lived with Speegle at a residence on Freedman Lane in early 2000 or 2001. Hill explained he helped Speegle move personal items from his residence on Freedman Lane to a new residence in Boise, Idaho. Hill also recalled handling the weapons that Speegle owned, specifically the 22 caliber and 264 caliber rifles.

Hill told me he remembered taking the 264 caliber rifle to a rifle range and shooting it. He estimated this occurred sometime during the time he lived at the Freedman residence. From my investigation, I know this would have been prior to the Johnson homicides. Hill explained he attempted to sight the rifle in and is quite sure he touched the scope during this process. Therefore, Hill knows this

Officer 163 HARKINS, STEVE Report Date 2/12/2009
Supervisor Review 163 HARKINS, STEVE Review Date 2/10/2009
Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 2

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 2 of: 2

is why his fingerprint was found on the rifle scope.

Hill remembered meeting the Johnson's at their residence. Hill was introduced to the Johnson's by Mel Speegle. This only occurred once and was only a brief encounter.

This interview was recorded and is contained on a DVD.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/12/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/10/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 3

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 1 of: 1

Incident Case Number BCS00902-0028 Report Title ISP LAB INFO
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/17/2009 12:26 PM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: Case #- BCS00902-0028
Johnson Homicide- Case #- BCS0 0309-0016

I have spoken with Randy Hall from the Idaho State Lab. Hall informed me the laboratory report concerning the fingerprint found on the piece of Johnson evidence is not completed as of 2-17-09. Once this report is completed, it will be sent immediately. Once I receive this report, I will forward them to the Blaine County Prosecuting Attorney's Office.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/17/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/10/2009

Distribution _____

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Blaine County Sheriff's Office



BOOKING REPORT 0700004186

Location: RELEASED

Booking Number 0700004186 Inmate PIN 25237 Booking Date/Time 03/01/2007 13:22 Scheduled Release 03/02/2007 14:43 Release Date/Time 03/02/2007 14:43 Booking Officer RODRIGUEZ, RENE Entry Officer RODRIGUEZ, RENE
Last Name HILL First Name CHRISTOPHER Middle Name KEVIN Name Suffix Juvenile Dispo Language Spoken ☒ Booking Compl

Cautions:

PERSONAL INFORMATION

Current Address Home Address SHOSHONE, ID 83352
Phone () Phone ()
Residence IS 7 S.S.N. Drivers License F DL ID
State ID No. FBI Other ID DL
Date of Birth Age 52 Sex M Race W Ethnicity N Height 60 Weight 200 Build M
Eyes BLU ☐ Glasses Hair GRY Style S Length S Skin WHITE
Facial F Teeth W Marital Status SINGLE Religion NO PREFERENCE Yrs Ed. 12
Place of Birth Citizenship US Gang

CHARGES

Statute 18-8001 DWP DRIVING W/O PRIVILEGES - IN STATE Level M Degree MIS Type
OBTS Booking Case Arrest Date/Time 03/01/2007 12:39
Arrest Location SH 75 MP 101, BLAINE CO. Arresting Agency ORI ID0070000 ☐ Dom
Arresting Officer CA151 ABSTON, CHASE Arresting Agency Case No.
Warrant Type Warrant Citation
Other Chargeable Offense
End Of Sentence Date: Bond Amount 500 Cash 500 Bond Type SURETY/CAS
Court Case CR-07-652 Court Date Judge Court Venue BLAINE COUNTY
Disposition
Comments \$150.00 FINE 3 DAYS JAIL SUSPENDED, 3-DAYS SWP
Cleared 5 Cleared Comments

Statute 49-331(1) 5418 | DRIVERS LICENSE- CANCELLED, FICTITIOUS, Level M Degree MIS Type
MUTILATED, SUSPENDED
OBTS Booking Case Arrest Date/Time 03/01/2007 12:39
Arrest Location SH 75 MP 101, BLAINE CO. Arresting Agency ORI ID0070000 ☐ Dom
Arresting Officer CA151 ABSTON, CHASE Arresting Agency Case No.
Warrant Type Warrant Citation
Other Chargeable Offense
End Of Sentence Date: Bond Amount 121 Cash 121 Bond Type SURETY/CAS
Court Case CR-07-652 Court Date Judge Court Venue BLAINE COUNTY
Disposition
Comments CHARGE DROPPED
Cleared 0 Cleared Comments

HOLDS INFORMATION

SCARS/MARKS/TATTOOS

Code Description Comment

ALIAS INFORMATION

Name DOB SSN

EMPLOYMENT

Employer UNEMPLOYED Address
Phone ()
Occupation COOK How Long ☐ Part Time ☐ Student

VEHICLE

Inse State ID Veh. Year 1986 Make TOYT Model 4RUNN Style 4D Color BLU
Impound ADVANCED 578-5230 Phone ()
Address ☐ Hold on Vehicle Hold Agency
Comments

BOOKING COMMENTS

947
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Blaine County Sheriff's Office

BOOKING REPORT 0700004186

Location: RELEASED



LEGAL REPRESENTATION

Attorney Name

Phone ()

☐ Phone Call Made

NEXT OF KIN

FRIEND

Name RICK NORRIS

Home Phone ()

Work Phone ()

Address OWNS EAST MAGIC RESORT
EAST MAGIC RD
MAGIC, ID

Officer Signature

Inmate Signature

03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 1

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTSEvidence Received Information

Evidence Received: 09/03/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: RANDY TREMBLE ph. (208)788-3692
Received By: MICKEY HALL ph. (208)884-7170



Evidence Received: 09/04/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer:
Delivered By: JD BOWERMAN ph. (208)364-2676
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: MARK DALTON
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: TINA WALTHALL
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/12/2003
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/23/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By: ED FULLER ph. (208)788-5555
Received By: MICKEY HALL ph. (208)884-7170

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 2

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 09/25/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/06/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/17/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS/RON TAYLOR ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/17/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 11/18/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: CYNDI HALL
Received By: LOGGED IN BY J DAVENPORT ph. (208)884-7170

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03/10/2009

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Page 3

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 11/20/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: TINA WALTHALL
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 12/19/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STU ROBINSON ph. (208)324-6050
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 01/02/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ED FULLER ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 02/06/2004
Add. Crime Date:
How Received: CERTIFIED U.S. MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 02/09/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

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Page 4

CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 03/26/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 04/16/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 05/05/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 12/08/2004
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS ph. (208)788-5555
Delivered By: GREG SAGE ph. (208)788-5555
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/21/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 01/20/2005
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

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CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 05/05/2005

Add. Crime Date:

How Received: CERTIFIED US MAIL

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: STEVE HARKINS ph. (208)788-5555

Delivered By:

Received By: JANE DAVENPORT ph. (208)884-7170

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Subject	JOHNSON, MATTHEW F	12/25/1980		
Subject	LEHAT, ROBIN LYNN	02/11/1964		
Subject	NUXOLL, RUSSELL	06/02/1973		
Subject	SPEEGLE, DELL	09/06/1951		
Subject	SYLTON, JANET	02/03/1959		
Suspect	JOHNSON, SARAH MARIE	01/24/1987		
Suspect	SANTOS - DOMINGUEZ, BRUNO	01/17/1984		
Victim	JOHNSON, ALAN S	03/03/1957		
Victim	JOHNSON, DIANE M	11/30/1950		

< 03/09/2009 Supplemental Information >

EVIDENCE DESCRIPTION:

Item LC (retained evidence) - small evidence envelope containing thirty-nine latent lift cards.

Item PHOTOS (retained evidence) - manila envelope containing seven sets of negatives, fourteen reprints from negative set #4, thirteen photo documentation cards, and sixty-seven digital image printouts.

Evidence was signed and sealed when received.

EXAMINATION:

Three latent prints were previously entered and searched through the Automated Fingerprint Identification System (AFIS) by the ISP Bureau of Criminal Identification where SID #ID10043023, Christopher Kevin Hill, was generated as a possible candidate.

CONCLUSION:

The latent prints marked #2-1, 2-3, 18a-3, & 18b-7b have been positively individualized (identified) to the #3 finger (right middle) of the fingerprint card bearing the name Christopher Kevin Hill.

The latent print marked #2-2 has been positively individualized to the #4 finger (right ring) of the fingerprint card bearing the name Christopher Kevin Hill.

The latent print marked #18a-1 has been positively individualized to the #6

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

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CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

finger (left thumb) of the fingerprint card bearing the name Christopher Kevin Hill.

The individualizations were effected using a certified copy of a fingerprint card recorded by officer #260 on behalf of the Blaine County Sheriff's Office on 03-01-07.

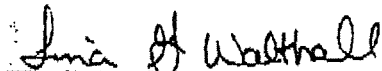
Latents #2-1, 2-2 & 2-3 were recovered from the "rifle scope." Latent 18a-1 was recovered from a live round inside a box of Winchester Super X 264 ammunition. Latent #18a-3 was recovered from the "inside plastic box" of Winchester Super X 264 ammunition. Latent 18b-7b was recovered from "inner plastic box" of Winchester Super X 264 ammunition.

Based on the available exemplars, Christopher Kevin Hill is excluded from being the source of the latent impressions marked #13-4c, 16-1, 18a-5, 18b-4b, 41-6a/41-7c, & 61-1.

The latent prints marked #2-6, 18a-6, & 18b-7a are inconclusive to the available exemplars bearing the name Christopher Kevin Hill. The inconclusive results are due to a lack of quantity/clarity in the latent impression.

The latent prints marked #15-1, 17-1, 18a-2, 18b-6, & 20-1 are inconclusive to the available exemplars bearing the name Christopher Kevin Hill. The inconclusive results are due to incomplete known impressions with which to compare, no palms provided, tips not recorded, etc. In order to complete the comparison portion of this examination, it is requested that a quality set of major case prints (palms, fully rolled fingers, sides of fingers, & finger tips) be submitted for Christopher Kevin Hill. Please resubmit items #13 & 41 at that time.

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.



Tina G. Walthall

Forensic Scientist II, Latent Prints

DATE: 3/10/09

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

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CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

A F F I D A V I T

STATE OF IDAHO)

) ss.

COUNTY OF ADA)

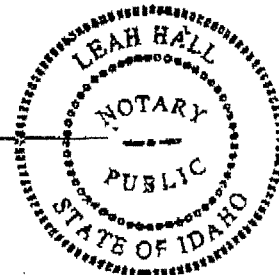
Tina G. Walthall, being first duly sworn, deposes and says the following:

1. That I am a Forensic Scientist II, Latent Print examiner with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

Tina G. Walthall
Tina G. Walthall
Forensic Scientist II, Latent Prints

Date: 3/10/09SUBSCRIBED AND SWORN TO BEFORE ME 3/10/09

Leah Hall
Notary Public, State of Idaho

Commission Expires: 6/6/13

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Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received Information

Evidence Received: 09/03/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: RANDY TREMBLE ph. (208)788-3692
Received By: MICKEY HALL ph. (208)884-7170



Evidence Received: 09/04/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer:
Delivered By: JD BOWERMAN ph. (208)364-2676
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ~~RANDY TREMBLE ph. (208)788-3692~~
Delivered By: MARK DALTON
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: TINA WALTHALL
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/12/2003
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/23/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By: ED FULLER ph. (208)788-5555
Received By: MICKEY HALL ph. (208)884-7170

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CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 09/25/2003

Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/06/2003

Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/17/2003

Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS/RON TAYLOR ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/10/2003

Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/17/2003

Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 11/18/2003

Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: CYNDI HALL
Received By: LOGGED IN BY J DAVENPORT ph. (208)884-7170

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CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 11/20/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: TINA WALTHALL
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 12/19/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STU ROBINSON ph. (208)324-6050
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 01/02/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ED FULLER ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 02/06/2004
Add. Crime Date:
How Received: CERTIFIED U.S. MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 02/09/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

958
000110

i-pc

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 03/26/2004

Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 04/16/2004

Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 05/05/2004

Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 12/08/2004

Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS ph. (208)788-5555
Delivered By: GREG SAGE ph. (208)788-5555
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/21/2004

Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 01/20/2005

Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

959
000111-Pc

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

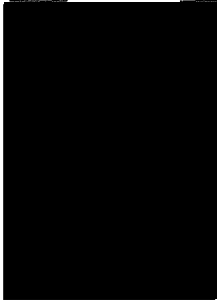
Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 05/05/2005
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 03/19/2009
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: CURTIS MILLER ph. (208)788-5506
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 04/09/2009
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: HARKINS ph. (208)788-5515
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Subject	JOHNSON, MATTHEW F			
Subject	LEHAT, ROBIN LYNN			
Subject	NUXOLL, RUSSELL			
Subject	SPEEGLE, DELL			
Subject	SYLTON, JANET			
Suspect	JOHNSON, SARAH MARIE			
Suspect	SANTOS - DOMINGUEZ, BRUNO			
Victim	JOHNSON, ALAN S			
Victim	JOHNSON, DIANE M			

< 06/03/09 AMENDED REPORT >

THIS AMENDED REPORT IS BEING ISSUED TO REPLACE THE M20032402 REPORT DATED 03/10/2009. A PORTION OF THE EXAMINATION SECTION OF THAT REPORT WAS INADVERTENTLY LEFT OUT. THIS CORRECTION IS REFLECTED IN THIS REPORT.

EVIDENCE DESCRIPTION:

Item LC (retained evidence) - small evidence envelope containing thirty-nine latent lift cards.

Item PHOTOS (retained evidence) - manila envelope containing seven sets of

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CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

negatives, fourteen reprints from negative set #4, thirteen photo documentation cards, and sixty-seven digital image printouts.

Evidence was signed and sealed when received.

EXAMINATION:

Three latent prints were previously entered and searched through the Automated Fingerprint Identification System (AFIS) by the ISP Bureau of Criminal Identification where SID #ID10043023, Christopher Kevin Hill, was generated as a possible candidate.

Twenty remaining latent prints were analyzed and compared to a certified copy of a fingerprint card bearing the name Christopher Kevin Hill.

CONCLUSION:

The latent prints marked #2-1, 2-3, 18a-3, & 18b-7b have been positively individualized (identified) to the #3 finger (right middle) of the fingerprint card bearing the name Christopher Kevin Hill.

The latent print marked #2-2 has been positively individualized to the #4 finger (right ring) of the fingerprint card bearing the name Christopher Kevin Hill.

The latent print marked #18a-1 has been positively individualized to the #6 finger (left thumb) of the fingerprint card bearing the name Christopher Kevin Hill.

The individualizations were effected using a certified copy of a fingerprint card recorded by officer #260 on behalf of the Blaine County Sheriff's Office on 03-01-07.

Latents #2-1, 2-2 & 2-3 were recovered from the "rifle scope." Latent 18a-1 was recovered from a live round inside a box of Winchester Super X 264 ammunition. Latent #18a-3 was recovered from the "inside plastic box" of Winchester Super X 264 ammunition. Latent 18b-7b was recovered from "inner plastic box" of Winchester Super X 264 ammunition.

Based on the available exemplars, Christopher Kevin Hill is excluded from being the source of the latent impressions marked #13-4c, 16-1, 18a-5, 18b-4b, 41-6a/41-7c, & 61-1.

The latent prints marked #2-6, 18a-6, & 18b-7a are inconclusive to the available exemplars bearing the name Christopher Kevin Hill. The inconclusive results are due to a lack of quantity/clarity in the latent impression.

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2009

06/03/2009

Idaho State Police Forensic Service
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 7

CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

The latent prints marked #15-1, 17-1, 18a-2, 18b-6, & 20-1 are inconclusive to the available exemplars bearing the name Christopher Kevin Hill. The inconclusive results are due to incomplete known impressions with which to compare, no palms provided, tips not recorded, etc. In order to complete the comparison portion of this examination, it is requested that a quality set of major case prints (palms, fully rolled fingers, sides of fingers, & finger tips) be submitted for Christopher Kevin Hill. Please resubmit items #13 & 41 at that time.

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.

Tina G. Walthall

Tina G. Walthall
Forensic Scientist II, Latent Prints

DATE: 6/3/09

300114-PC
9/2

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received Information

Evidence Received: 09/03/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: RANDY TREMBLE ph. (208)788-3692
Received By: MICKEY HALL ph. (208)884-7170



Evidence Received: 09/04/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer:
Delivered By: JD BOWERMAN ph. (208)364-2676
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ~~RANDY TREMBLE ph. (208)788-3692~~
Delivered By: MARK DALTON
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: TINA WALTHALL
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/12/2003
Add. Crime Date:
How Received: ~~FED EX~~
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/23/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By: ED FULLER ph. (208)788-5555
Received By: MICKEY HALL ph. (208)884-7170

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CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 09/25/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/06/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/17/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS/RON TAYLOR ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/17/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 11/18/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: CYNDI HALL
Received By: LOGGED IN BY J DAVENPORT ph. (208)884-7170

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CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 11/20/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: TINA WALTHALL
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 12/19/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STU ROBINSON ph. (208)324-6050
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 01/02/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ED FULLER ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 02/06/2004
Add. Crime Date:
How Received: CERTIFIED U.S. MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 02/09/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

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CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 03/26/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 04/16/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 05/05/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 12/08/2004
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS ph. (208)788-5555
Delivered By: GREG SAGE ph. (208)788-5555
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/21/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 01/20/2005
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

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000119 PC

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

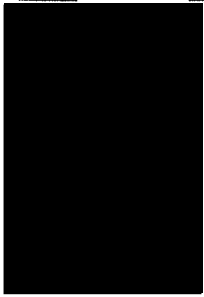
Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 05/05/2005
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 03/19/2009
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: CURTIS MILLER ph. (208)788-5506
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 04/09/2009
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: HARKINS ph. (208)788-5515
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Subject	JOHNSON, MATTHEW F			
Subject	LEHAT, ROBIN LYNN			
Subject	NUXOLL, RUSSELL			
Subject	SPEEGLE, DELL			
Subject	SYLTON, JANET			
Suspect	JOHNSON, SARAH MARIE			
Suspect	SANTOS - DOMINGUEZ, BRUNO			
Victim	JOHNSON, ALAN S			
Victim	JOHNSON, DIANE M			

< 06/03/2009 Supplemental Information >

EVIDENCE DESCRIPTION:

Item #88 (Agency Exh. 4) - large evidence envelope containing two fingerprint cards (88a & 88b), one finger tip print card (88c), and two palm print sheets (88d & 88e) bearing the name Christopher Hill.

Item LC (retained evidence) - small evidence envelope containing thirty-nine latent lift cards.

Item PHOTOS (retained evidence) - manila envelope containing seven sets of negatives, fourteen reprints from negative set #4, thirteen photo

000120-PC

CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

documentation cards, sixty-eight digital image printouts, and one certified copy of a fingerprint card.

Evidence was signed and sealed when received.

EXAMINATION:

Five remaining latent prints were analyzed and compared to the known exemplars (Item #88) bearing the name Christopher Hill.

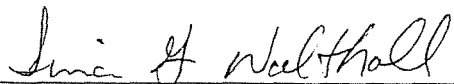
CONCLUSION:

The latent print marked #20-1 has been identified to the left palm (hypothenar) of the palm print sheet bearing the name Christopher Hill. The identification was effected using a palm print sheet recorded by Stevens/#KS263 on behalf of the Blaine County Sheriff's Office on 04/07/09.

Latent #20-1 was recovered from the stock of item #20.

The latent prints marked #15-1, 17-1, 18a-2, & 18b-6 are inconclusive to the available exemplars bearing the name Christopher Hill. The inconclusive results are due to the known exemplars being smudged, over-inked/under-inked, and/or incomplete known impressions with which to compare. In order to complete the comparison portion of this examination, it is requested that a quality set of major case prints (to include tips of fingers, sides of fingers, and palms) be submitted for Christopher Hill.

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.



Tina G. Walthall

Forensic Scientist II, Latent Prints

DATE: 6/3/09

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CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

A F F I D A V I T

STATE OF IDAHO}

} ss.

COUNTY OF ADA }

Tina G. Walthall, being first duly sworn, deposes and says the following:

1. That I am a Forensic Scientist II, Latent Print examiner with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

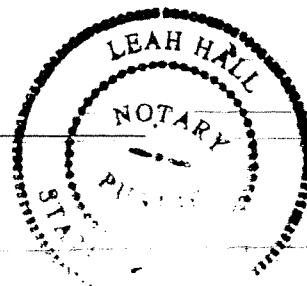
Tina G. Walthall

Tina G. Walthall

Forensic Scientist II, Latent Prints

Date: 6/3/09

SUBSCRIBED AND SWORN TO BEFORE ME

6/3/09Leah Hall
Notary Public, State of IdahoCommission Expires: 6/6/13: 209
000122-1

CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

A F F I D A V I T

STATE OF IDAHO }
COUNTY OF ADA } ss.

Tina G. Walthall, being first duly sworn, deposes and says the following:

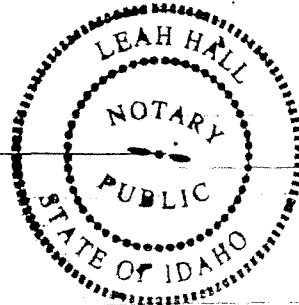
1. That I am a Forensic Scientist II, Latent Print examiner with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

Tina G. Walthall
Tina G. Walthall
Forensic Scientist II, Latent Prints

Date: 6/3/09

SUBSCRIBED AND SWORN TO BEFORE ME 6/3/09

Notary Public, State of Idaho
Commission Expires: 6/6/11



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000115-PC

10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 1

CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received Information

Evidence Received: 09/03/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: RANDY TREMBLE ph. (208)788-3692
Received By: MICKEY HALL ph. (208)884-7170



Evidence Received: 09/04/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer:
Delivered By: JD BOWERMAN ph. (208)364-2676
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: MARK DALTON
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: TINA WALTHALL
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/12/2003
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/23/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By: ED FULLER ph. (208)788-5555
Received By: MICKEY HALL ph. (208)884-7170

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10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 2

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 09/25/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/06/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/17/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS/RON TAYLOR ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/17/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 11/18/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: CYNDI HALL
Received By: LOGGED IN BY J DAVENPORT ph. (208)884-7170

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000134-972

10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

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CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

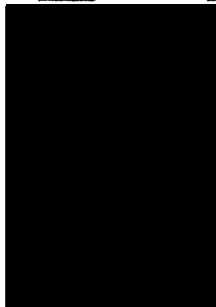
Evidence Received: 05/05/2005
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 03/19/2009
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: CURTIS MILLER ph. (208)788-5506
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 04/09/2009
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: HARKINS ph. (208)788-5515
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 07/13/2009
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEV HARKINS/MARK DALTON
Delivered By: MARK DALTON
Received By: JUDY PACKER ph. (208)884-7170

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Subject	HILL, CHRISTOPHER K			
Subject	JOHNSON, MATTHEW F			
Subject	LEHAT, ROBIN LYNN			
Subject	NUXOLL, RUSSELL			
Subject	SPEEGLE, DELL			
Subject	SYLTON, JANET			
Suspect	JOHNSON, SARAH MARIE			
Suspect	SANTOS - DOMINGUEZ, BRUNO			
Victim	JOHNSON, ALAN S			
Victim	JOHNSON, DIANE M			

< 10/15/2009 Supplemental Information >

Item #89 (Agency Exh. 1) - large evidence envelope containing four palm

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10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

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CL Case No.:	M20032402	Agency Case No.:	030900016
Agency:	BE PD - BELLEVUE DEPT OF PUBLIC SAFETY		
ORI:		Crime Date:	Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

print sheets (89a to 89d) and five sheets of fingerprints (89e to 89i) bearing the name Chris Hill.

Item LC (retained evidence) - small evidence envelope containing thirty-nine latent lift cards.

Item PHOTOS (retained evidence) - manila envelope containing seven sets of negatives, fourteen reprints from negative set #4, thirteen photo documentation cards, sixty-eight digital image printouts, one certified copy of a fingerprint card, and two copies of CDs/DVDs turned over for discovery.

Evidence was signed and sealed when received.

EXAMINATION:


Four remaining latent prints were analyzed and compared to the known exemplars (Item #89) bearing the name Chris Hill.

CONCLUSION:

Latent prints marked #15-1, 17-1 & 18b-6 - are excluded to the available exemplars bearing the name Chris Hill.

The latent print marked #18a-2 is inconclusive to the available exemplars bearing the name Chris Hill. The inconclusive result is due to a lack of quantity/quality of detail in the latent print.

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.



Tina G. Walthall
Forensic Scientist II, Latent Prints

DATE: 10/15/09

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10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

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CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

A F F I D A V I T

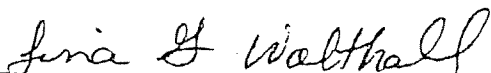
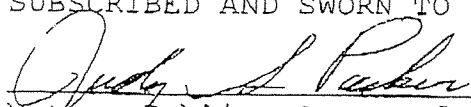
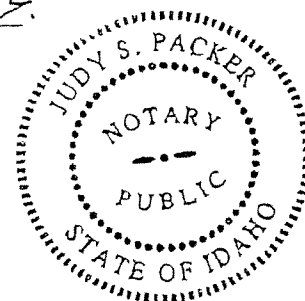
STATE OF IDAHO }

) ss.

COUNTY OF ADA }

Tina G. Walthall, being first duly sworn, deposes and says the following:

1. That I am a Forensic Scientist II, Latent Print examiner with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

Tina G. Walthall
Forensic Scientist II, Latent PrintsDate: 10/15/09SUBSCRIBED AND SWORN TO BEFORE ME 15 October 2009
Notary Public, State of Idaho
Commission Expires: 4 October 2013975
000131

48



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 12

Case Number
BCSO0902-0028

Date: 11/02/2009

Page: 1 of 2

Incident Case Number BCSO0902-0028 Report Title HILL ALIBI STATEMENT
Date/Time Occurred 2/3/2009 4:00:00 PM Report Date/Time 11/2/2009 12:09:10 PM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative On October 28, 2009, I was notified by Lt. Curtis Miller that Christopher Hill's original statement form from July 13th was missing from the case file. Lt. Miller asked me to contact Hill upon my return from vacation and obtain another statement.

On November 2, 2009 at approximately 1040 hours, I met with Christopher Hill at his residence at 46 East Magic Road and asked him to verify his previous statement concerning his whereabouts on the evening of September 1st through the morning of September 2nd 2003. I had Hill fill out another voluntary statement form to replace the original misplaced statement form. At no time did I mention Hill's previous statement and only asked him to write again where he was on the above mentioned dates.

Hill stated he had been "camping on a hill on East Magic Road all summer in a '67 blue Ford pick-up." Hill then stated that he was not in the habit of rising early and that at the time of the crime, he "was sleeping at the time." Hill informed me after completing the statement he had camped on the hill during the summer and had moved into his present residence later in the Fall of 2003.

End of report.

Officer 162 DALTON, MARK

Report Date 11/2/2009

Supervisor Review _____

Review Date _____

Distribution _____

AKH
100140-Pc

BLAINE COUNTY SHERIFF'S DEPARTMENT

1650 Aviation Drive

HAILEY, IDAHO 83333

Office: 208-788-5555 Fax 208-788-4105

VOLUNTARY STATEMENT

TODAY'S DATE 11/2/09 TODAY'S TIME 10:40
NAME Christopher K Hill DATE OF [REDACTED]
SSN [REDACTED] PHONE 481-9009 WORK PHONE 288-5960
STREET ADDRESS 46 E McGee Rd P.O. BOX [REDACTED]
CITY Bellevue STATE ID
DRIVER'S LICENSE # [REDACTED] STATE ID
INSURANCE CO. [REDACTED] POLICY # [REDACTED]
DATE OF INCIDENT 9/2/08 TIME OF INCIDENT [REDACTED]
LOCATION OF INCIDENT Camping on a hill on E McGee Rd

a 11 summer in a 67 Blue Ford pickup
and was sleeping at the time.

SIGNATURE

Christopher K Hill

WITNESS

977
000141-1

Idaho State Police Forensic Services



LAB NO: m20032402

Staff Member: Randy Parker

Contact information:

Name: Steve Harkin Agency: Bellevue PD/Blaine Co. So

Phone: 720-1060 Date & Time of contact: 2/11/09

Notes: Received a message from Randy Parker that Steve Harkin had called & indicated he would like to be the contact on this case

& that they had ascertained that Christopher Hill was a friend of Mel Sporensky & had helped him move into the apartment.

Contact information:

Name: Steve Harkin Agency: Bellevue PD/Blaine Co. So

Phone: 720-1060 Date & Time of contact:

Notes: Called to (208-788-5554) see what they wanted the report fixed to. Also let them know we will be needing info on Mr. Hill.

Contact information:

Name: _____ Agency: _____

Phone: _____ Date & Time of contact: _____

Notes: _____

Contact information:

Name: _____ Agency: _____

Phone: _____ Date & Time of contact: _____

Notes: _____

Idaho State Police Forensic Services

LAB NO: m20032402

Staff Member: T. Weatherly

Contact information:

Name: Lt. Dawrs Agency: Blaine Co. So.

Phone: 788-5571 Date & Time of contact 1/27/09

Notes: Called Blaine Co. So. Spoke w/ Lt.

Dawrs requested copy of their FPC for
Christopher Hill requested certified copy of
letter indicating that it is a true & accurate
copy of the card they have on file

Contact information:

Name: L. Dawrs Agency: Blaine Co. So.

Phone: 788-5571 Date & Time of contact 1/27/09

Notes: Called to get e-mail address will
try to scan as a TIFF & send

Contact information:

Name: Corey Weatherly Agency: Blaine Co. So.

Phone: 720-8184 Date & Time of contact Left message 1/27/09

Notes: Called back 1/28/09. Called enquiring
as to why we were looking into Mr. Hill
indicated he was investigating him as well
& would like to contact the Agency involved
in my case. I indicated to him that when
I contacted that agency, I would relay his
message.

Name: Walt Flemming Agency: Blaine Co. So.

Phone: 788-5555 Date & Time of contact 2/10/09 2:45

Notes: Called Sheriff Flemming and informed him of the
AFIS TLI Hit to Christopher Kevin Hill. Sheriff Flemming
said they will start looking into the case.



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 5

Case Number
BCSO0902-0028

Date: 04/28/2009

Page: 1 of: 1

Incident Case Number BCSO0902-0028 Report Title RECEIVED LAB REPORT
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 4/3/2009 12:38 PM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____



Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Detective Harkins

RE: BCSO Case #- 0902-0028

On 4-3-09 I received the original lab report concerning this investigation. The lab report requests major case prints for Christopher Hill. I have left several messages for Hill and am still waiting for his call. Once I make contact with him, I will obtain these prints and forward them to the Idaho State Laboratory. This original lab report will be forwarded to the Blaine County Prosecuting Attorney's Office and one will be retained for our file.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 4/3/2009

Supervisor Review 160 MILLER, CURTIS

Review Date 4/3/2009

Distribution _____

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000094-PC



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 6

Case Number
BCSO0902-0028

Date: 04/28/2009

Page: 1 of 2

Incident Case Number BCSO0902-0028 Report Title COLLECTION OF FINGERPRINTS AND DNA
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 4/7/2009 12:02 PM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: BCSO 0902-0028
Collection of Fingerprints and DNA from Christopher K. Hill

On 4-7-09 Christopher K. Hill voluntarily came into the Blaine County Sheriff's Department to be fingerprinted and to allow me to obtain a sample of DNA from him. Blaine County Correctional Deputy Kent Stevens fingerprinted Hill. The fingers, palms and blades of both hands were done electronically. The fingertips were done with ink and are included on a red card. The palms and blades were printed out on a white sheet of paper, while the normal fingerprints are printed on a regular card from the machine.

After the fingerprinting, I obtained four buccal swabs from Hill. These samples were obtained from his cheek area. The swabs were sealed and initialed and then placed back into the paper packaging and put into a sealed evidence envelope. The entire set of fingerprints were also placed into their own evidence envelope and sealed.

Exhibit #3- Fingerprints

Officer 163 HARKINS, STEVE

Report Date 4/7/2009

Supervisor Review 160 MILLER, CURTIS

Review Date 4/8/2009

Distribution _____

000095-AC



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 6

Case Number
BCS00902-0028

Date: 04/28/2009

Page: 2 of: 2

Exhibit #4- DNA Buccal Swabs

These items will be sent to the Idaho State Laboratory in Meridian, Idaho by the Blaine County Sheriff's Evidence Custodian Lt. Miller ASAP.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 4/7/2009

Supervisor Review 160 MILLER, CURTIS

Review Date 4/8/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 9

Case Number
BCSO0902-0028

Date: 10/17/2009

Page: 1 of: 2

Incident Case Number BCSO0902-0028 Report Title HILL MAJOR CASE PRINTS
Date/Time Occurred 2/3/2009 4:00:00 PM Report Date/Time 7/14/2009 10:01:01 AM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Property

Item No 7 Code _____ Article _____ Make _____ Model _____
Description 1 EVIDENCE ENVELOPE Serial No _____ QTY _____ Value _____

Narrative/Summary

Narrative On July 13, 2009 at approximately 0715 hours, I met with Christopher K. Hill at the Blaine County Sheriff's Office and transported him to the Idaho State Police Forensics Laboratory in Meridian to have him fingerprinted for this case. At approximately 0950 hours, we met with Forensic Scientist II Tina Walthall.

Walthall then printed Hill's hands and fingers in a "major case" format. The nine print cards taken by Walthall were retained as evidence, placed in an evidence envelope and assigned exhibit #1. After packaging the exhibit, Walthall handed me the evidence envelope and I then filled out an evidence submission form and Clerk Judy Parker accepted it into the lab for testing and comparison. (See the copy of the evidence submission form.)

I then transported Hill back to the sheriff's office. While en route, I asked Hill if he could recall where he was on the evening of September 1, 2003 until approximately 0630 on the 2nd. Hill stated he had been camping in his truck, a powder blue 1967 Ford F-150 with a camper shell, on a hill overlooking East Magic Road approximately two miles west of Highway 75. Hill informed me he had camped at that spot all summer and into October 2003, when he moved into the village of East Magic. Hill stated he had been camping alone and that there had been several

Officer 162 DALTON, MARK

Report Date 7/14/2009

Supervisor Review 160 MILLER, CURTIS

Review Date 7/7/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 9

Case Number
BCSO0902-0028

Date: 10/17/2009

Page: 2 of: 2

people from East Magic who had seen his truck parked up on the hillside all that summer. I had Hill fill out a voluntary statement form and retained it in this case file.

It should be noted that upon entering Hill's "major case prints" into the property entry, I saw that exhibit #1 had already been taken as an entry. Therefore, when this evidence is returned from the state lab, I will re-mark the envelope as exhibit #5 which will coincide with the proper property entry for this case.

End of report.

Officer 162 DALTON, MARK

Report Date 7/14/2009

Supervisor Review 160 MILLER, CURTIS

Review Date 7/7/2009

Distribution

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10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 1

CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:Agency Case No.: 030900016
Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received Information

Evidence Received: 09/03/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: RANDY TREMBLE ph. (208)788-3692
Received By: MICKEY HALL ph. (208)884-7170



Evidence Received: 09/04/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer:
Delivered By: JD BOWERMAN ph. (208)364-2676
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: MARK DALTON
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: RANDY TREMBLE ph. (208)788-3692
Delivered By: TINA WALTHALL
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/12/2003
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/23/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By: ED FULLER ph. (208)788-5555
Received By: MICKEY HALL ph. (208)884-7170

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000126-PC

10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 2

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 09/25/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/06/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/17/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS/RON TAYLOR ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/17/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 11/18/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: CYNDI HALL
Received By: LOGGED IN BY J DAVENPORT ph. (208)884-7170

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10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 3

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 11/20/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: TINA WALTHALL
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 12/19/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STU ROBINSON ph. (208)324-6000
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 01/02/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ED FULLER ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 02/06/2004
Add. Crime Date:
How Received: CERTIFIED U.S. MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 02/09/2004
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER / HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

987
000128-8

10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 4

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 03/26/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 04/16/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 05/05/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 12/08/2004
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS ph. (208)788-5555
Delivered By: GREG SAGE ph. (208)788-5555
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/21/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 01/20/2005
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

988

000129

10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 5

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

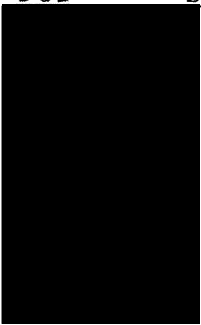
Evidence Received: 05/05/2005
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 03/19/2009
Add. Crime Date:
How Received: FED EX
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: CURTIS MILLER ph. (208)788-5506
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 04/09/2009
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: HARKINS ph. (208)788-5515
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 07/13/2009
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEV HARKINS/MARK DALTON
Delivered By: MARK DALTON
Received By: JUDY PACKER ph. (208)884-7170

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Subject	HILL, CHRISTOPHER K			
Subject	JOHNSON, MATTHEW F			
Subject	LEHAT, ROBIN LYNN			
Subject	NUXOLL, RUSSELL			
Subject	SPEEGLE, DELL			
Subject	SYLTON, JANET			
Suspect	JOHNSON, SARAH MARIE			
Suspect	SANTOS - DOMINGUEZ, BRUNO			
Victim	JOHNSON, ALAN S			
Victim	JOHNSON, DIANE M			

< 10/13/2009 Supplemental Information >

On July 8, 2009 at I received a request from Latent Section Supervisor

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CONT 2010

10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 6

CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

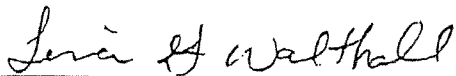
ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Randy Parker to take major case prints from Christopher Hill. I met Blaine County Detective Mark Dalton at the Idaho State Police Forensic Laboratory on the morning of July 13, 2009. Detective Dalton was accompanied by Christopher Hill, identified to me by his drivers licence.

At approximately 9:50 a.m., I proceeded to take a set of major case prints on Mr. Hill using the black powder/adhesive lift method. At approximately 11:00 a.m. nine sheets of known prints were turned over to Detective Dalton and they departed the lab.



Tina G. Walthall

Forensic Scientist II, Latent Prints

DATE: 10/15/09

990

00013

10/15/2009

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 7

CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

A F F I D A V I T

STATE OF IDAHO)

) ss.

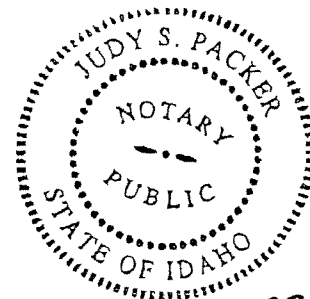
COUNTY OF ADA)

Tina G. Walthall, being first duly sworn, deposes and says the following:

1. That I am a Forensic Scientist II, Latent Print examiner with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

Tina G. WalthallTina G. Walthall
Forensic Scientist II, Latent PrintsDate: 10/15/09SUBSCRIBED AND SWORN TO BEFORE ME 15 October 2009Judy S. Packer

Notary Public, State of Idaho

Commission Expires: 4 October 2013

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000192

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

3 - - - - - x
4 SARAH M. JOHNSON,

5 Petitioner,

6 vs.

7 STATE OF IDAHO,

8 Respondent.
9 - - - - - x

Case No. CV 2006-00324



10
11
12 DEPOSITION OF ROBERT KERCHUSKY

13 August 27, 2009

14
15
16
17
18
19 VOLUME 1
20 Pages 1 through
21 98

22
23 Reported by
24 Frances J. Morris
25 CSR No. 696



P.O. Box 1625
605 West Fort Street
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992

1 DEPOSITION OF ROBERT KERCHUSKY, taken at the instance of the
2 Respondent, at the law offices of the Attorney General, Criminal
3 Law Division, in the City of Boise, State of Idaho, commencing
4 at 1:00 p.m., on August 27, 2009, before Frances J. Morris,
5 Certified Court Reporter, a Notary Public in and for the State
6 of Idaho, pursuant to notice, and in accordance with the Idaho
7 Rules of Civil Procedure.

8
9 A P P E A R A N C E S

10 FOR THE PETITIONER

11 CHRISTOPHER P. SIMMS
12 ATTORNEY AT LAW
13 Pine Street Station Building
14 400 South Main Street, Suite 303
PO Box 1861
Hailey, Idaho 83333
Phone: (208) 788-2800
Fax: (208) 788-2300

15 FOR THE RESPONDENT

16 OFFICE OF THE ATTORNEY GENERAL
17 CRIMINAL LAW DIVISION
18 BY JESSICA M. LORELLO
19 700 West State Street - Fourth Floor
20 PO Box 83720
Boise, Idaho 83720-0010
Phone: (208) 332-3544
Fax: (208) 854-8074
E-mail: jessica.lorello@ag.idaho.gov

WITNESSES

	PAGE:
ROBERT KERCHUSKY	
EXAMINATION	4
BY MR. SIMMS	
EXAMINATION	70
BY MS. LORELLO	
FURTHER EXAMINATION	96
BY MR. SIMMS	

* * * * *

NO EXHIBITS MARKED

Page 1

Page 3

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

3 ----- x Case No. CV 2006-00324

4 SARAH M. JOHNSON,

5 Petitioner,

6 vs.

7 STATE OF IDAHO,

8 Respondent.

9 ----- x

10
11
12 DEPOSITION OF ROBERT KERCHUSKY
13 August 27, 2009

14
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20 VOLUME I
21 Pages 1 through
22 98

23 Reported by
24 Frances J. Morris
25 CSR No. 696

WITNESSES

PAGE:

ROBERT KERCHUSKY

EXAMINATION

4

BY MR. SIMMS

EXAMINATION

70

BY MS. LORELLO

FURTHER EXAMINATION

96

BY MR. SIMMS

NO EXHIBITS

MARKED

Page 2

Page 4

1 DEPOSITION OF ROBERT KERCHUSKY, taken at the instance of the
2 Respondent, at the law offices of the Attorney General, Criminal
3 Law Division, in the City of Boise, State of Idaho, commencing
4 at 1:00 p.m., on August 27, 2009, before Frances J. Morris,
5 Certified Court Reporter, a Notary Public in and for the State
6 of Idaho, pursuant to notice, and in accordance with the Idaho
7 Rules of Civil Procedure.

APPEARANCES

8
9
10 FOR THE PETITIONER
11 CHRISTOPHER P. SIMMS
12 ATTORNEY AT LAW
13 Pine Street Station Building
14 400 South Main Street, Suite 303
15 PO Box 1861
16 Hailey, Idaho 83333
17 Phone: (208) 788-2800
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20 OFFICE OF THE ATTORNEY GENERAL
21 CRIMINAL LAW DIVISION
22 BY JESSICA M. LORELLO
23 700 West State Street - Fourth Floor
24 PO Box 83720
25 Boise, Idaho 83720-0010
Phone: (208) 332-3544
Fax: (208) 854-8074
E-mail: jessica.lorello@ag.idaho.gov

BOISE, IDAHO

Thursday, August 27, 2009, 1:00 p.m.

ROBERT KERCHUSKY,

5 produced as a witness at the instance of the
6 respondent, having been first duly sworn, was
7 examined and testified as follows:

EXAMINATION

BY MR. SIMMS:

11 Q. Could you state your full name, please,
12 for the record.

13 A. Yes. My name is Robert J. Kerchusky.
14 Last name is spelled K-e-r-c-h-u-s-k-y.

15 Q. What is it you do for a living?

16 A. I'm a private fingerprint consultant.

17 Q. And do you operate as a sole
18 practitioner or a cooperation or an LLC?

19 A. Private.

20 Q. How long have you been doing that,
21 Mr. Kerchusky?

22 A. Let's see. From '69, I guess that
23 would be -- I mean, '96. That would be about 13
24 years.

25 Q. Okay. And, you know, you just

1 (Pages 1 to 4)

Page 5

1 pronounced your name "Kerchufski" like with an "f"
 2 as opposed to an "s."
 3 A. No. Kerchusky.
 4 Q. I've been calling you Kerchusky for the
 5 last nine months, so I wanted to make sure I
 6 didn't have it wrong.
 7 A. Yeah, it's Kerchusky.
 8 Q. So prior to your work, your private
 9 work, how were you employed?
 10 A. I was employed -- well, let me start
 11 from the beginning.
 12 In 1952 I started with the FBI, and I
 13 had six months of classroom training with direct
 14 supervision in fingerprints. Then I was with the
 15 FBI for approximately 17 years where I ended up
 16 being assistant supervisor there.
 17 I took a lateral transfer to
 18 Metropolitan Police Department in Washington D.C.,
 19 and I was there ten years from '69 to '79, I guess
 20 it was. I have to get these dates -- I might be
 21 off a little bit here.
 22 Then I worked independently in
 23 Pennsylvania for five years as a consultant also.
 24 And then I came to Idaho and started the latent
 25 fingerprint section in here in Idaho. That was in

Page 6

1 August of 1984. And I stayed with the state for
 2 12 years.
 3 And in '96 I retired and said I'm not
 4 going to work no more.
 5 Q. Then you immediately began to work in a
 6 private capacity?
 7 A. Yeah, exactly.
 8 Q. Bob, tell us -- if I can call you Bob
 9 during the deposition.
 10 A. Sure.
 11 Q. I may also refer to you as
 12 Mr. Kerchusky -- tell me what it is actually that
 13 you do. You've described some training starting
 14 in 1952 and that your expertise in is
 15 fingerprints. Tell us what that means in a
 16 forensic sense.
 17 A. Basically speaking, at the FBI they was
 18 teaching us everything about fingerprints, the
 19 Henry system of classification. I don't know if
 20 they even teach the Henry system of classification
 21 because of the automated systems. The automated
 22 systems changed just about everything as far as
 23 fingerprints. They still use pattern
 24 interpretations to search in the AFIS system.
 25 Q. Okay.

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1 A. And there we got first-hand, hands-on
 2 training at the FBI regarding fingerprints,
 3 everything about them.
 4 When I went to the Metropolitan Police
 5 Department, the same thing, we got training there,
 6 and we went to different classes and so forth.
 7 Then basically all the way down the line.
 8 Then, I think it was in the '70s, they
 9 started the IAI in which I was helping out
 10 establishing the IAI which is the International
 11 Association for Identification.
 12 And I became certified as a latent
 13 examiner back then in the '70s, but I don't know
 14 exactly the date at this point.
 15 So, anyhow, I stayed certified all the
 16 way through '96. And then I still receive all
 17 the -- I'm still a member of IAI, let's put it
 18 that way. And I receive all their bimonthly
 19 booklets that they send out. And basically
 20 speaking, that's what it comes down to.
 21 Q. Okay. I want to talk in a more
 22 practical sense about the application of knowledge
 23 of fingerprints and how it's utilized in criminal
 24 law.
 25 Just to put this in context, I have

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1 understood that each human being has a very unique
 2 set of markings on their fingers and that those
 3 markings on the fingers can leave traces of those
 4 in various ways by touching objects.
 5 A. Latent prints you're talking there.
 6 Q. That's correct. So there would be a
 7 print. A finger touches a hard surface, an
 8 impervious surface, and, because of sweat and oil
 9 other substances that secrete from human beings,
 10 that a marking is left.
 11 That marking can then be later lifted
 12 or picked up in a variety of chemical or
 13 mechanical ways.
 14 Please go ahead and describe in more
 15 detail, just out of an abundance of caution for
 16 foundation for the record, I want you to explain
 17 that little bit more.
 18 A. Okay. We are dealing with latent
 19 fingerprints. And the surfaces that we deal with
 20 is with the porous and non-porous surfaces, which,
 21 the porous surface is paper. That's completely
 22 different than a non-porous surface. And the
 23 reason why, if I place my hand on a paper item and
 24 leave a fingerprint there, that print can last
 25 there for years compared to one that's made with

Page 9

Page 11

1 oily matter or perspiration where, over a period
2 of time, it would dry up.

3 Now, the methods that were used
4 basically to get latent fingerprints in this
5 case --

6 Q. Let's not talk about this case yet.
7 Let's talk about generalities.

8 A. Okay. This is basically what it comes
9 down to.

10 Q. I understand.

11 A. They would be -- if you have an item
12 that they want to have processed, and they take
13 that back to their office, the best way to do it
14 would be to Super Glue it which is cyanoacrylate
15 ester. But if you are out on the field and you
16 can't use it, then you'd have to use the old
17 dusting way you see in the movies. And then you
18 dust it down, get lifting tape, lift it off, and
19 place it on a lift card. Then put on the other
20 side where it was lifted from, the location, and
21 all that, the case number, date, and initials.

22 Q. You're describing now a print left on
23 an impervious, non-porous, flat, shiny-type
24 surface; is that correct?

25 A. Doesn't have to be shiny, per se. It

1 A. They are not lifted from there.

2 Q. How are they obtained?

3 A. What happens is, the amino acids
4 secrete into the paper. And if you're using
5 ninhydrin, you have to submerge it or spray it.

6 And, then, what I do is, I wait 12
7 hours to see if anything comes up. And you place
8 it in an area where you have some moisture. And
9 we had it where it was over a sink when we were at
10 the state. Now I use a tub if I'm doing it
11 privately to have the moisture underneath it to
12 help accelerate the latent print to develop.
13 Usually in 12 hours you're going to get latent
14 fingerprints, is what it amounts to.

15 But they have to be photographed
16 because a print in ninhydrin could disappear over
17 a period of time. So you have to make sure you
18 photograph it as soon as you possibly can.

19 Q. Is that to preserve the image?

20 A. Yeah, definitely.

21 Q. Either way you have a lifted print or
22 this image that's created by photograph of the
23 amino acid development?

24 A. Right.

25 Q. What's then done with these latent

Page 10

Page 12

1 could have it even on plastics, really, which is
2 not really that shiny.

3 And, then, if you take an item back to
4 your office, Super Glue is the best method. What
5 happens, you place it into a confined area, and
6 you open up a packet, put it in this confined
7 area, which would be like a fish tank, and you put
8 a glass of water in there to help accelerate the
9 Super Glue. And what happens is, Super Glue will
10 go from a liquid to a solid once it hits either
11 the amino acids or water from the finger. Then
12 you could take it out, and you could lift the
13 latent print, dust it and lift it.

14 You're doing the same dusting as you do
15 at a crime scene. But this time, when you do it
16 with Super Glue, you could lift it sometimes as
17 many as ten or fifteen times. I've got them up
18 about 15 times. That's the reason why Super Glue
19 is superior than just the old conventional method
20 where you're dusting.

21 Q. Tell us, then, how these images of
22 prints that are taken -- you've described,
23 actually, a hard surface. How would a print be
24 lifted from, you said, a porous surface, a piece
25 of paper?

1 images to assist in determining who touched an
2 object, and finally, how they're used in
3 forensics?

4 A. Now, if you don't have suspects, you
5 get elimination prints. Now, elimination prints
6 could be anybody that touched that area or touched
7 that item. And why you have elimination prints,
8 you want to eliminate the ones that aren't of
9 value as suspects. We are looking for the
10 suspects, is what we are doing.

11 Now, if you don't have a print card
12 with somebody's name, or they don't know who did
13 it, then it's placed into AFIS, which is the
14 Automated Fingerprint Identification System.

15 Now, there's tons of different states
16 that have these systems. And Idaho is WIN, which
17 there is six other states besides Idaho such as
18 Montana, Wyoming, Utah, and Nevada, and all those
19 surrounding. Plus they could search in Washington
20 and California.

21 Q. Okay. And thereby either eliminating
22 people as suspects or potentially identifying or
23 finding an identity for a person who left latent
24 prints on the scene who would otherwise be left
25 unknown?

3 (Pages 9 to 12)

Page 13

1 A. That's correct. This way you're trying
2 to find out if you could find the suspect in the
3 system.

4 Now, you have to realize this system
5 doesn't come out and say, This is the guy. It
6 doesn't pick it out for you. What it does, you
7 ask for a candidate list. In that candidate list
8 you have to compare if you want to check -- all
9 you do is check the monitor and see if the latent
10 matches the ink print. And if it looks close,
11 then you go ahead and pull the original out, the
12 original latent and the original ink, and then do
13 comparisons.

14 Q. Let's talk about some of the other uses
15 generally of latent prints or the status of the
16 science, if you will.

17 What else can you do with a latent
18 print? For example, can you match one latent
19 print found at the scene of a crime to other
20 latent prints found on the scene of the crime and
21 use those in a forensic way?

22 A. You can do that.

23 Q. In what way could it be helpful?

24 A. You're showing that this person touched
25 numerous items. In other words, you're showing

Page 14

1 that he probably -- suppose he went into a bank
2 and he touched a note and then he touched the
3 counter where he went up to, it's showing that he
4 actually was one and the same person in that area,
5 is what it comes down to.

6 Q. Is there anything about the patterns of
7 latent prints that are found from different
8 fingers or palms that may tell you how a suspect
9 handled an object?

10 A. Patterns? In other words, you're
11 trying to say if it's on a doorknob? Is that what
12 you are trying to say?

13 Q. Well, anything about the way that
14 patterns of prints may be left at the scene that
15 could tell you how someone behaved while they were
16 at a particular location.

17 A. Okay. Let me put it this way, we had a
18 homicide that a vehicle was used in it. And the
19 prints were on the outside, on the driver's side
20 window.

21 Now, when I dusted the vehicle down, I
22 seen that they were on the outside in a downward
23 position on the driver's side.

24 Q. Okay. Describe -- we have no
25 photographs or videotape in the room. Describe

Page 15

1 what you mean in a downward pattern.

2 A. In other words, the window was open
3 some, the fingers were in the downward position.
4 So you point an arrow pointing down to show how
5 the fingerprints were there. That would indicate
6 that this person was inside the car, not outside
7 the car, and actually used that car, is what it
8 comes down to. Otherwise it was on the outside,
9 he could say, I just went by and touched it.

10 Q. Are there peculiarities between, say,
11 an index finger and a pinky finger and a thumb
12 that can be detected from latent prints, in other
13 words, that you could say, not knowing anything
14 more, but that that's an index fingerprint?

15 A. You can't say it's an index or a thumb.
16 The only way in a thumbprint you can is because of
17 the size of the thumbprint. And you go from the
18 core all the way to the tip which is about twice
19 the distance of your other fingers. So that one
20 you could a lot of times tell which it is because
21 it gives you such a large area from that core area
22 all the way up.

23 Q. For example, if you had five prints
24 left on a water drinking glass, based on the
25 pattern and size of those prints, could you tell,

Page 16

1 could you be certain, could you render a
2 scientific opinion or expert opinion that that was
3 grasped by all four fingers and a thumb of one
4 human being, of one person?

5 A. In a sense you can. It's not going to
6 be -- you know, I wouldn't -- you couldn't say
7 it's 100 percent. But by the way the fingers are
8 on the glass, you could tell this one is lower --
9 your index is lower than your middle, your ring is
10 lower than your middle finger, and your index is
11 lower than your ring finger. That would show that
12 it would be probably from the same hand.

13 Q. You said index but you were pointing to
14 what I call my pinky or my little finger.

15 A. Little finger, yeah.

16 Q. And is there anything about the shape
17 of a print that you can tell the pressure that's
18 being exerted by a person who leaves that print?

19 A. Yeah, you can in a sense. If I grab an
20 item such as this (indicating), I have space in
21 between the fingers. But if I am putting pressure
22 as hard as I can, there won't be no space in
23 there. And sometimes you'll see movement in those
24 fingers if he's using it for something else.

25 Q. Well, that got to my next question.

Page 17

Page 19

1 Can you detect motion or movement in fingers
2 sometimes if prints are left in a particular way
3 or the shape of the print?

4 A. Yeah, you could. Just as I explained
5 there, if you could tell by how tight they are
6 together and the movement that's there, you can
7 see some movement in those fingers.

8 Q. So just circling back here a little
9 bit, you said that you had six months of
10 supervised training with the FBI --

11 A. Uh-huh.

12 Q. -- at the beginning of your fingerprint
13 expert career. Since that time, since 1952 have
14 you attended other professional training of any
15 kind?

16 A. Not since I retired from the state
17 police which -- before it was the department of
18 law enforcement, but now it's state police.

19 Q. Let's talk about between 1952 and '96
20 or '97. And I apologize. Or even '98. I forgot
21 what year you told me you retired.

22 A. '52 to '96.

23 Q. So during that 40-plus year period, did
24 you attend professional training?

25 A. Oh, yeah. Well, we go to IAI classes.

1 here today, as you know, in regard to this matter
2 of Sarah Johnson versus the State of Idaho in her
3 post-conviction relief petition. And before the
4 court now is the first amended petition for
5 post-conviction relief that stems from her
6 conviction for homicide, two counts, that happened
7 in 2005.

8 Do you have --

9 A. Was it 2005?

10 Q. In 2005 already. It's some time back.

11 A. When she went to court?

12 Q. When she was convicted, yes, sir.

13 A. Okay. It's 2005. I thought it was
14 2004. I'm wrong.

15 Q. That's okay. Bob, do you have some
16 familiarity with the case generally?

17 A. Yes, definitely.

18 Q. Had you been hired as the fingerprint
19 expert for the defense for Sarah Johnson, and did
20 you testify at trial?

21 A. Yes, I did.

22 Q. Okay. And since then -- well, let me
23 try to rephrase that.

24 You and I have had numerous
25 conversations in regard to this case from the time

Page 18

Page 20

1 They have -- what do they call them? -- seminars.
2 They go to seminars. Really, seminars they do
3 teach you some stuff, but, really, you don't learn
4 it unless you have hands-on training. Any way you
5 look at it, you can't get this in college, you
6 can't get it anywhere. The hands-on training is
7 what you need.

8 Q. Okay. They didn't teach us anything
9 about fingerprints in-law school either, Bob. You
10 learn it from doing it.

11 A. I don't think so.

12 Q. So, Bob, during the time from 1952
13 forward all the way to today, do you have any
14 estimate of the number of cases that you have
15 worked on dealing with fingerprint evidence?

16 A. There would be no way in the world I
17 could go back. There would be thousands, but I
18 don't know how many.

19 Q. Since the time of your retirement from
20 Idaho State Police during the time you've been
21 doing private consulting, have you kept yourself
22 abreast of the state-of-the-art in fingerprint
23 technology?

24 A. Oh, yes. Yes.

25 Q. Bob, I'm going bring us up to, we are

1 that I have been representing Sarah on her
2 post-conviction matter, say, beginning last
3 fall/last winter?

4 A. Yes, in January.

5 Q. Okay. That was our first personal
6 meeting?

7 A. Right. January. Numerous times.

8 Q. And while you've been consulting with
9 me, you're not retained, are you?

10 A. Not at this point no. It's pro bono.

11 Q. You hadn't been paid anything for your
12 work, for the advice you've given me, for the
13 lessons that you have given me in what fingerprint
14 forensics are all about?

15 A. Yes. No payment.

16 Q. Bob, are you familiar with the petition
17 that's been filed in this case?

18 A. Yes, I did read it. Yes.

19 Q. Okay. In fact, you also swore out, not
20 one, but two affidavits in support of that
21 petition?

22 A. Yes, I believe I did. Yeah.

23 Q. So briefly I'm just going to review
24 what the general and the specific allegations are
25 that are relating to fingerprint evidence. And

5 (Pages 17 to 20)

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1 those generally could be classified, I would say,
2 that I have alleged that trial counsel was
3 ineffective in representing Sarah Johnson at trial
4 in regard to fingerprint evidence. That's one
5 classification.

6 And then the other classification is
7 that we have some newly-discovered fingerprint
8 evidence.

9 Now, have you and I talked about both
10 of those two broad classes?

11 A. Yes, we have.

12 Q. As to the first class, just to put us
13 into some type of context here, we have alleged
14 that trial counsel failed to adequately
15 investigate fingerprint evidence; generally we
16 allege that he failed to file motions to compel
17 disclosure of fingerprint evidence; and we have
18 alleged that there was a failure to object to the
19 untimely, or what I describe, I argue, as untimely
20 disclosure of fingerprint evidence; and finally
21 his failure to move for continuance due to the
22 late disclosure of that fingerprint evidence.

23 Now, to get more specific, we have
24 alleged, and I think you've sworn, to each of
25 these items in your affidavit -- and certainly

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1 they are included in my petition that I filed --
2 we allege that there were usable latent
3 fingerprints that were not submitted through the
4 automated system, and that trial counsel, that he
5 failed to draw the jury's attention to that issue.

6 We assert that trial counsel failed to
7 elicit testimony regarding lifting prints from a
8 trash can lid. We allege that trial counsel
9 failed to elicit testimony that a palm print on a
10 .264 caliber weapon, the butt of that weapon, was
11 fresh. We allege that trial counsel failed to
12 elicit testimony that latent prints found on a
13 whole host of .264 caliber ammunition and
14 ammunition packaging was fresh. We allege that
15 trial counsel failed to elicit testimony from you
16 that latent prints found on doorknobs throughout
17 the crime scene were fresh?

18 You allege that you learned that,
19 subsequent to trial, that there were more prints
20 that should have been run through the AFIS system
21 or the other automated systems you just talked
22 about generally. You allege that you discovered,
23 subsequent to trial, that your old colleague Maria
24 Eguren, told you that she received only three
25 photocopies of latent prints versus all of the

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1 actual latent lift cards to be run through AFIS.

2 In other words, that you learned that there was
3 apparently some misstatements made at trial by
4 both Ms. Eguren and her supervisor, Tina Walthall.

5 You allege that trial counsel failed to
6 elicit or to impeach Stu Robinson because he
7 testified during a grand jury proceeding that
8 there were no latents found at the scene when
9 really there was 35-plus latent fingerprints found
10 at the scene. And then finally this
11 newly-discovered evidence business.

12 So are you familiar with all those
13 allegations?

14 A. Yes. Yes.

15 Q. Now, are there any of these -- let me
16 strike that and ask the question differently.

17 Since the time that the petition was
18 filed and those affidavits were sworn in March of
19 2009, have you had a more complete opportunity to
20 review the entirety of this record?

21 A. Yes. In fact, I had the opportunity to
22 read my transcript, which I never did read it
23 until just a few months ago.

24 Q. Okay. And so are there any of these
25 allegations that were made that there is, in part

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1 or in whole, that you can't continue to stand
2 behind?

3 A. Yeah. The one on the trash can there,
4 I believe it was mentioned that it was never
5 fingerprinted during my testimony.

6 Q. Okay. In other words, that that's not
7 accurate when we alleged that trial counsel didn't
8 draw the jury's attention to that?

9 A. That's correct.

10 Q. That, in fact, there was some mention
11 of that in the transcript?

12 A. That's correct.

13 Q. Not as much as you or I would have
14 liked, but it was there?

15 A. It was there.

16 Q. Any of these other issues?

17 A. I think even on the latent part, I
18 believe that they did bring up the fact that there
19 was other latents during my testimony.

20 Q. Yes.

21 A. And besides the three, ones that were
22 used for AFIS, but I believe that was another
23 thing they brought up.

24 Q. Okay. So those are two things. You
25 would retract those if you had all the knowledge

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1 and the recollection that you have today?

2 A. Right. Yeah.

3 Q. Back to the time you swore the
4 affidavit out, you would have written it a little
5 differently?

6 A. I would have, yes.

7 Q. Fair enough. Now, I recognize that you
8 have worked for a host of different parties in
9 your fingerprint career. But I suppose the
10 question I have got for you is, what generally is
11 the information that a fingerprint expert in
12 forensics would want to assist him in rendering an
13 opinion from the lawyers or from the police
14 officers dealing with the evidence?

15 A. Okay. What I always ask for is all the
16 reports dealing with the fingerprints and the
17 crime scene. I also request photocopies of the
18 latent fingerprints and also copies of the inked
19 or known impressions, elimination prints of
20 anybody that could have touched any of the items.
21 I like to see photographs of the crime scene. I
22 like to see the evidence that was used or the
23 latent prints were developed from. I also like to
24 see if they have a videotape of the crime scene so
25 I could see for myself where they came from, how

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1 it was done, and what could have been done.

2 Q. Okay. So go through those items. And
3 I don't know if that is in a systematic way or an
4 individual way, but together why are all those
5 individual parts important for you to render an
6 opinion or to assist in discovering the truth?

7 A. The reason why, because I'd like to see
8 myself how the evidence was processed. Did they
9 use Super Glue? Did they use ninhydrin? Did they
10 use --

11 Q. Can I stop you?

12 MR. SIMMS: Do you need a spelling for that?

13 THE REPORTER: That would be really nice.
14 Thank you.

15 MR. SIMMS: I don't even think I know how to
16 spell it.

17 THE WITNESS: Ninhydrin. It's
18 n-i-n-h-y-d-r-i-n.

19 Q. BY MR. SIMMS: Sorry to break up your
20 train of thought. I know we are going to do that
21 at the end. We might as well do it now.

22 So with that, I interrupted you. Can
23 you pick up your train of thought on that? I
24 think you were saying how they were processed,
25 basically.

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1 A. Well, it sort of broke my frame of
2 thought again. But, anyhow, you need all those
3 items. You like to look at the evidence to see
4 how it was done to see if they marked the evidence
5 to show where the latent print came from because
6 what you do, you mark the evidence where it came
7 from, and then you do the same thing on the card.
8 In other words, if I have 18-A-1 here, I should
9 18-A-1 here. Then I mark it to show where it came
10 from in case somebody wants to know where did it
11 come from.

12 And that's the reason why you like to
13 look at it, to see if it was done this way or not.
14 And then how did they do their processing, if they
15 did it in the right sequence. In other words, if
16 I went ahead and I had a paper box and I used
17 ninhydrin, then come back and try to use Super
18 Glue, you're going out of sequence and you're not
19 going to get anything. So you have to go in the
20 proper sequence when you're processing evidence,
21 also.

22 Q. Other reasons why it's important to
23 have -- you talked a little bit about maybe
24 fingerprint reports, processing reports. But why
25 the photos, the video, the physical evidence?

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1 A. I like to see if they missed anything.

2 The thing about a crime scene, suppose
3 I went into crime scene, even in this one here, if
4 I felt that the walls were touched by the suspect
5 and I want to see if it was in blood, I would have
6 use Amido Black to spray the walls all over and
7 see if I can find blood prints on there.

8 Q. You have raised a point. Why don't you
9 go ahead and explain what this.

10 A. Amido Black is a chemical enhancer for
11 latent fingerprints in blood, is what it amounts
12 to. So what you do is, you spray it and see if
13 you could find any bloody prints on that surface,
14 is what it comes down to.

15 Q. I hesitate, but I'm going to go ahead
16 and jump in. That has not been an issue that's
17 been raised specifically in this case in either
18 during trial or the pleadings in this
19 post-conviction relief matter, has it?

20 A. No, no. It was never brought. I'm
21 using it as an example.

22 Q. I understand. So I will hold off
23 before I get back into our case. And go on with
24 your explanation why these various items are
25 important being at the crime scene. You're

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1 describing why that might be important.
2 Any other reasons that it could be
3 important for you, for the fingerprint forensic
4 expert, at the crime scene?
5 A. For me, yeah. I like to see what all
6 areas could have been done, if it could have been
7 done differently, if -- there are so many things
8 that could come into it when you're looking at
9 those tapes, I could go on all day about what I'd
10 be looking for. But basically speaking, I'm
11 trying to find out what happened at that crime
12 scene by using the physical evidence.
13 Q. Okay. So let's talk about the typical
14 case and the materials and the evidence that you
15 might be provided in your current position as a
16 private consultant. I'm going to presume for a
17 moment that your standard course of operation is
18 you don't receive all the same opportunity that
19 you might have if you were working with the state?
20 A. Oh, definitely.
21 Q. Fair enough assumption?
22 A. Definitely, yeah.
23 Q. Let's talk about the materials, that is
24 the evidence, and whatever other materials you
25 might receive -- information, reports, et

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1 cetera -- that you generally receive in your work
2 as a private consultant. I take that as generally
3 working for defense lawyers and defendants?
4 A. Yes, basically speaking, that's who I
5 work for.
6 Q. What materials and evidence do you
7 normally request and do you normally receive?
8 It's a two-part question there.
9 A. Basically speaking, you will not get
10 the evidence that was processed. You'll have to
11 go and look at the evidence. And I always get the
12 ink fingerprints and then latent fingerprints,
13 especially if there is a match made.
14 Q. Okay.
15 A. Even if there isn't a match made, I
16 like to look at them. The reason why, I want to
17 see if there is any latents that they never did
18 eliminate that are still available to show that
19 that could have been the suspect's prints.
20 Q. Okay.
21 A. Those are key factors as far as --
22 that's the main thing I always try to get.
23 Q. Okay.
24 A. And then I want the reports to see how
25 they did it, where it came from -- all, you know,

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1 the location, where was it at in a crime scene, so
2 forth. So these are key factors that you do need.
3 You do need the reports, also.
4 Q. And photos of the crime scene, do you
5 typically get those?
6 A. Sometimes. Not all the time.
7 Photographs of latents I do get, though. But as
8 far as photos from crime scenes, I get them
9 sometimes, depending on type of crime and what
10 the -- on discovery what they will give up as far
11 as sending to me, is what it comes down to.
12 Q. Let's talk about this case. Do you
13 recall generally how you became involved in Sarah
14 Johnson's defense?
15 A. Yes. I believe it was Mr. Rader called
16 me and asked if I'd like to work on this case. I
17 told him I would. And that's basically how it
18 started.
19 Q. Okay. And did you work with some type
20 of a written agreement?
21 A. No, there was no agreement, really.
22 Only thing is, when it was time to get paid, then
23 they'd have to, you know, make out -- I guess it's
24 a -- whatever it is. Then I'd signed it. That's
25 about it. Whatever papers they needed.

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1 Q. All right. Do you by practice submit
2 some type of letter or other written document that
3 tells defense counsel what it is that you are
4 looking for?
5 A. Usually it's verbally. I usually don't
6 have any written statements. What I do need, it's
7 verbally, is what it amounts to. If they request
8 it, I will. But otherwise it's verbally.
9 Q. Do you remember specifically what you
10 would have asked Mr. Rader and Mr. Pangburn to
11 provide you to get going in assisting Ms. Johnson
12 in this case?
13 A. Yes, I did.
14 Q. What is it you asked them for?
15 A. Well, all the things I already went
16 over. I asked for the grand jury papers. I asked
17 for all the reports from the forensic field as far
18 as fingerprints were concerned. I asked for the
19 latent prints, the ink fingerprints, elimination
20 prints. And I did want to see the evidence
21 in-person, which I only seen the gun, the .264
22 gun, that was already in plastic. And that was
23 before I went to trial. That's the only thing I
24 did see. And I wanted to see the tape from the
25 crime scene which I never did see that.

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1 Q. When you say "tape," you mean a
2 videotape --
3 A. Videotape.
4 Q. -- or photo images of the crime scene?
5 A. Of the crime scene, yeah. I never did
6 see those.
7 Q. Okay. And do you remember what
8 materials or evidence came to you and when it
9 might have come to you? I realize the specific
10 dates might be difficult at this juncture, but the
11 general chronology of how materials came out to
12 you.
13 A. Yes. I first got the court
14 transcripts, I guess it was in July. And it had
15 to be -- was it 2004? I guess it was.
16 Q. Now, are you talking about the grand
17 jury transcript?
18 A. Grand jury, yeah, uh-huh.
19 Q. Now, when were you first engaged; do
20 you remember that?
21 A. Engaged as far as?
22 Q. When did you first get on the case?
23 A. Oh, gee. Let's see. That was in July
24 of, I guess, 2004. And I received them probably a
25 month or two later when I first got the case.

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1 Q. Okay.
2 A. Then the latent prints, I believe it
3 had to be in December, January before I got all
4 the latent and ink fingerprints or known
5 fingerprints from the suspects and the -- not
6 suspects. Eliminations prints.
7 Q. And so, what I am understanding you to
8 have testified to is, over a period of some seven
9 months from the time of being retained to work
10 with the defense team until January preceding --
11 just in the days preceding trial, you had received
12 a grand jury transcript, you had received
13 photocopies of the latent prints and photocopies
14 of the inked or what you're now calling
15 elimination prints?
16 A. Yes. Not photocopies of those. They
17 were just regular copy machine prints.
18 Q. Okay. And then during that period of
19 time, did you communicate to defense counsel, to
20 trial counsel, that you needed more information
21 and more materials, more reports, more of anything
22 to assist you in doing your job?
23 A. Yes. All along I kept requesting
24 different things from them. And, like I said, the
25 only thing I really got were the latent and the

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1 ink known fingerprints and the transcript of the
2 grand jury and also all the worksheets from the
3 forensic lab as far as fingerprints were
4 concerned.
5 Q. That's what I wanted to ask you. As
6 far as those forensic reports went, that is, the
7 ISP did some work trying to figure out which
8 latent prints matched known persons and which
9 latent prints remained unidentified?
10 A. Right.
11 Q. So you received those reports?
12 A. Yep.
13 Q. Do you recall, did you receive the
14 other police reports -- did you ever receive the
15 other police reports that you had asked for?
16 A. What reports are you referring to?
17 Q. Any other reports. Were any other
18 reports forthcoming from trial counsel?
19 A. You know, the only thing I could tell
20 you is what I received. I don't know what was out
21 there, as far as that goes. And I think I got
22 everything, but I don't know. I'm just going by
23 what I received. That's it.
24 Q. Okay. And when was it -- how long
25 before trial did you receive those prints?

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1 A. Like I said, it was in December or
2 January. And they came in not at one time, but
3 different pieces came in at different times.
4 Q. Do you remember receiving one
5 comprehensive report that had all of the lift
6 cards together with diagrams or drawings or
7 indications of where those latent fingerprints had
8 been lifted or obtained?
9 A. They had them, I believe, in the
10 original package I got, but there were just Xerox
11 copies. You can't use them for comparison
12 purposes. They are a guide as far as where they
13 were lifted from, because, on the backside, they
14 have where the card -- where the print was lifted
15 from and placed on the card.
16 Q. How did you eventually get a print,
17 latent prints, that were of high enough quality to
18 use for comparison purposes?
19 A. As I said, December and January --
20 Q. Okay. Is when you finally received --
21 A. -- when I finally started doing my
22 comparisons.
23 Q. Okay. Who provided you with that
24 information? Did you get it directly from ISP, or
25 did you get it from trial counsel?

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1 A. I think I got it from Dunn. Mr. Dunn.
2 Mr. Dunn was the one I think that brought them
3 over. And I couldn't -- I couldn't tell you when
4 or what date it was, or whatever. I should --
5 there is probably a chain of custody on the
6 folders that they brought it in. In other words,
7 they had a chain of custody, and they might -- it
8 might have been on there. But I don't know.

9 Q. Was there material that you received or
10 reviewed for the first time in just the day or
11 days preceding trial and your testimony?

12 A. Yes. I never did get the printouts of
13 the AFIS search. I never received them until it
14 was the day before I was going to testify. And I
15 also requested to go back and see the original
16 latent prints because I don't know what my quality
17 was that I was dealing with to compare what they
18 had. Because, unless you have them side by side,
19 you don't know what you have.

20 Q. I'm going leap forward and way past the
21 trial and ask you, did you have occasion to speak
22 with Maria Eguren in January of this year, of
23 2009? And, if so, did you learn anything new
24 about this case at that time?

25 A. Yes. I called her up and asked -- you

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1 Q. Is that also the time when she told you
2 that she hadn't received 30-something prints but
3 only three photocopies, and that's what had been
4 run through AFIS?

5 A. That's all she had, and that's all she
6 had in the system. And I'm sure that all she had
7 to do is bring them up and search them again.

8 Q. All right.

9 A. They are allegedly supposed to search
10 the ink fingerprints as they're put in there. But
11 you have to realize, if you don't have a real high
12 score -- in other words, 999 is the highest
13 score -- if you don't have a real high score,
14 people aren't going to look at them unless you run
15 them separately to find out for sure if you have a
16 hit or not.

17 Q. But, Bob, let me ask you the question
18 this way. Had you believed that Maria Eguren had
19 been handed all the latent prints and had
20 determined that only three were of value to run
21 through the system, and she had told you something
22 different in January of 2009 than what you had
23 believed these last four years?

24 A. Yes. She told me that all she received
25 was three latent photographs of latent prints, and

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1 were going to do a deposition on her, and I
2 asked -- started asking questions. And she
3 said -- well, I believe it was like January, the
4 middle of January, is what I could recall. And I
5 asked her a few questions. She says, Well, we
6 have a new development in here. And she said, Let
7 me call you back. There is people here. I'll
8 call you back.

9 And so she called me back in about an
10 hour and says that we got an AFIS hit. And I
11 asked her for the name and so forth. She said, I
12 don't have it here. You're going to have to call
13 when I'm at work.

14 That was over the weekend. And I
15 called her and over that weekend and got the
16 information who it was.

17 Q. Did she also tell you anything about
18 what prints -- excuse me -- what materials she had
19 actually received from Tina Walshall that were to
20 be run through the AFIS system when you had that
21 conversation with her in January of 2009?

22 A. Yeah. There was three prints that
23 were -- that they ran. And what she did is rerun
24 them again. From what I understand is that she
25 ran them again, and that's when she got the hit.

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1 that -- the day before she was going to testify,
2 she got all the latent prints. And she looked at
3 them, and she said there was quite a few that
4 could have been run that were never ran at that
5 time.

6 Q. Okay.

7 A. So she said it was too late to do it,
8 to put them in the system and search it. So she
9 didn't even go.

10 Q. Okay. Now, let me take you back prior
11 to trial. And knowing that you had less
12 information than you'd like, did you request
13 Pangburn to attempt to continue the trial?

14 A. Well, I mentioned to him that we should
15 have -- you know, bring everything up. As far as
16 the continuance, it was up to him, really, as far
17 as that goes. But I mentioned that there is
18 things that we should have done, as far as that
19 goes.

20 Q. Was there anything out of the grand
21 jury transcript that you took note of in regard to
22 fingerprints, or lack thereof, that you advised
23 trial counsel to impeach state's witnesses based
24 upon testimony that was made then?

25 A. Yeah. Once I read the transcripts, we

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1 had a meeting. I told them that I had something
2 important. And I said -- I read the transcript,
3 and in here Stu Robinson claimed that the question
4 was asked if there was any -- by Mr. Thomas, if
5 there was any latent prints on the gun, the
6 bullets, and the scope. And he says there was
7 nothing of value which means they are not good.

8 Then further down the line he asked was
9 there any -- was there any doubt in your mind that
10 you would find latent prints -- maybe I'm not
11 exactly right, but sort of that same thing -- and
12 he says, no, that numerous crime scenes, it
13 happens, but not very often, which is completely
14 false. Any time you go in a home with all the
15 people going around and so forth, you're going to
16 find fingerprints. Let's face it.

17 Q. Based upon that testimony, in your
18 understanding of what was being said there and
19 your understanding of fingerprints generally, did
20 you give any advice to trial counsel about how to
21 deal with that?

22 A. Well, I brought it to them. They are
23 the ones that said, Well, we should impeach him.
24 That was brought up by them, not me, because I
25 wouldn't know about impeaching anyhow, as far as

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1 that goes. But it was brought up by trial counsel
2 that we should impeach him, is what it comes down
3 to.

4 Q. And to your knowledge, did they do that
5 at trial?

6 A. No, they did not.

7 Q. Based on the limited information or
8 knowledge that you had based upon some of the
9 fingerprint forensic reports that you did have,
10 the view that you had of both photographs, and, I
11 think, Xerox copies of the latent lift cards and
12 some inked fingerprint cards, based on your
13 knowledge of the testimony or pretrial statements
14 that had been given by any witnesses, what
15 information or counseling did you give trial
16 counsel regarding your testimony, in a really
17 broad sense here, Bob?

18 A. I don't see -- I'm trying to get the
19 gist of what you're trying to bring out at this
20 point.

21 Q. Well, Bob, based on the information
22 that you had gathered, did you give trial counsel
23 advice in regard to the nature of the questions to
24 ask you, what you thought was important to bring
25 out; in fact, how you could really provide the

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1 best services for the defendant?

2 A. Oh, yes, I brought it out right from
3 the beginning.

4 Q. So tell us what you told the lawyers,
5 the trial lawyers, prior to your testimony.

6 So you're hired to give them advice and
7 to provide testimony. Tell us about the advice
8 you gave them in regard to your pending testimony
9 or impending testimony, I should say.

10 A. First of all, I told them that all the
11 latent prints in this case should be brought out
12 where they came from. It's important to let the
13 jury know exactly how many latent prints that came
14 from, the locations they were at. And basically
15 speaking, he didn't bring out all the latent
16 prints, as far as my testimony was concerned. And
17 I don't think it was even brought out -- some of
18 the latents weren't even brought out during
19 Tina's.

20 Q. Bob, what I want you to do, let's just
21 focus on the questions I'm asking you now, and
22 that is the advice that you gave them prior to
23 your testimony, what did you tell them to do. You
24 said you told them X, Y, and Z are the most
25 important issues here. So tell us specifically,

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1 not my hypothetical question, but what is it that
2 you told them was most important before your trial
3 testimony. Not what happened afterwards, but
4 before.

5 A. I told them that the latents from the
6 gun, the scope, the inserts, the bullets were all
7 crucial pieces of evidence and that they were
8 fresh prints. They were a year old at that time.
9 I only realized -- I thought it was year old until
10 later on when I read the Mr. Speegle's transcript.
11 And I also told him that, Could you please bring
12 out everything that we have here so the jury would
13 know exactly where they came from, how important
14 it was, and, you know, all the locations from the
15 gun and so forth.

16 Q. Okay. Bob, let's talk about those
17 things one at a time.

18 Prior to trial, did you have an
19 understanding of -- you referenced a scope. Did
20 you have an understanding of where that scope had
21 been found in relation to the crime scene?

22 A. Yes. I read that it was found on the
23 bed of Mr. Speegle's, is what I found out.

24 Q. Where is the bed of Mr. Speegle in
25 relation to where Alan and Diane Johnson were

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1 found murdered?

2 A. I couldn't tell you. I never seen any
3 of that. That's what I said; I never seen
4 anything of the crime scene.

5 Q. All right. Where was that scope found
6 on Mr. Speegle's bed in relation to where the
7 murder weapon was found?

8 A. From my understanding, the murder
9 weapon was found in the hallway of -- what I
10 understand, there was a shower and then was a
11 hallway here (indicating). And that gun was found
12 in that hallway.

13 Q. Okay. Separate and apart -- some
14 different part of the house would be your
15 understanding of where the gun was found in
16 relation to the scope?

17 A. Right. The scope was in Speegle's room
18 upstairs above the garage, and the gun was found
19 downstairs in the Johnson's house.

20 Q. Okay. And was it your understanding
21 that that scope had been on the gun?

22 A. Yes.

23 Q. Okay.

24 A. And the reason why, it goes --
25 Mr. Speegle took that gun out two weeks prior to

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1 the incident. And he was checking it out because
2 company was going to come for the wedding. So he
3 went ahead and checked that gun out, and the scope
4 was on there at that time. When he left for the
5 weekend, there was no scope on his bed. So it had
6 to be that the scope was taken off prior to the
7 homicide.

8 Q. If Mr. Speegle's pretrial statements
9 were to be believed?

10 A. Yes.

11 Q. All right. And tell me what latent
12 prints were found on the scope.

13 A. I believe they were of the No. 3 and 4
14 fingers.

15 Q. That being?

16 A. That would be your right middle and
17 ring finger.

18 Q. These two fingers?

19 A. These two (indicating).

20 Q. Okay. And any other latent prints
21 found on the scope?

22 A. Well, there was two of one. I don't
23 know which one it was, 3 or 4. There was two of
24 one of the fingers, 3 or 4. And then there was
25 one on the lens -- a cap that's over the scope,

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1 there was one on there also.

2 Q. Okay. So why was it your opinion that
3 testimony about those several latent prints was so
4 important to be elicited from you, the expert,
5 during trial?

6 A. Well, for one thing that scope was on
7 there before this homicide took place. Another
8 thing, the latent prints that were on there were
9 fresh prints. And I'm basing this on the fact
10 that it wasn't touched for a year. Only
11 Mr. Speegle touched it.

12 And from a hunter's standpoint of mine,
13 you never grab the scope to lift a gun up because
14 you don't want to knock it out of alignment. So,
15 if anybody would have grabbed it, they would have
16 grabbed the stock, or whatever it was, at that
17 time.

18 Q. Was there anything about the pattern of
19 latent prints that were found on this scope that
20 you thought was of great importance that should
21 have been elicited during your direct examination
22 at trial that was not?

23 A. It was never brought out as far as the
24 pressure that was used on there, which you would
25 use it when you're taking the scope off. But

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1 don't forget, it's a screw and you have to unscrew
2 it. So you have to use pressure on that scope.

3 Q. Well, maybe I should ask you the
4 question this way. Based upon your training and
5 experience, do you have a professional opinion
6 about -- in regard to the last person to touch
7 that scope and the purpose of the touching of the
8 scope?

9 A. Yes. In my opinion, it was
10 Mr. Christopher Hill because of the fingerprints
11 on there, the way they were tied together. And if
12 you go to pick the gun up, even if you picked it
13 up by the scope, you'd pick it up like this
14 (indicating), and the fingerprints would be on the
15 bottom part. The fingerprints that were depicted
16 on the drawing that I have shows it was on the top
17 of the scope which would indicate somebody was
18 holding it real tight to unscrew.

19 Q. So it's your opinion that that scope
20 was last touched by someone who was unscrewing the
21 scope from the rifle?

22 A. That's exactly the way I feel.

23 Q. Did you share that opinion with trial
24 counsel prior to trial?

25 A. I don't believe I did. I will be

12 (Pages 45 to 48)

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1 honest. I don't believe I did.
 2 Q. That's all we are asking you to be.
 3 Your testimony is that you told trial
 4 counsel that it was crucial that he ask the
 5 questions about the significance of the latent
 6 prints found on the scope?
 7 A. Right. And another thing I brought to
 8 their attention, I said we are not bringing out
 9 the fact why was the scope taken off the gun. I'm
 10 sure none of the jury members that are not hunters
 11 realize what it was. What it is is that the scope
 12 was a hindrance because, if you are shooting up
 13 close, say, within a couple yards, it's going to
 14 be a big blur. Or if it's dark and at night and
 15 you look and you can't see, if you hit a light, it
 16 will blind you. So that person knew to take that
 17 scope off so he wouldn't be blinded or bothered by
 18 that scope being on there like that.
 19 That's the reason why I told them. I
 20 said that's very important that we bring this out
 21 why the scope was taken off. Because it was never
 22 brought up, and I feel it was real important.
 23 Q. Do you have any opinion whether the
 24 person whose latent prints were found on that
 25 scope was the last person to touch the scope of

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1 the rifle before the shootings occurred?
 2 A. Yes. In my opinion, it was Christopher
 3 Hill's. Christopher Hill was the one that held
 4 that scope taking it off, is what it amounts to.
 5 Q. Is it your opinion, then, that
 6 Christopher Hill was the last person to touch that
 7 scope prior to the gun being used for the murders
 8 of Alan and Diane Johnson?
 9 A. Yes, I do.
 10 Q. Okay. You testified earlier that you
 11 had advised trial counsel of the importance of
 12 eliciting testimony from you during the trial of
 13 Sarah Johnson relating to latent fingerprints
 14 found on the -- I should say latent prints -- and
 15 I think they were palm prints as you described to
 16 me -- found on the stock of the murder weapon.
 17 Tell us about the significance --
 18 excuse me. Please explain what you told trial
 19 counsel prior to trial was significant about the
 20 palm prints on the stock of the rifle.
 21 A. Yes. I told them that the print that
 22 was on the stock of the rifle was not touched by
 23 anybody but Mr. Speegle, and that was two weeks
 24 prior to this incident. And that nobody touched
 25 it for at least a year because he claimed that

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1 maybe his wife or a friend helped him move, but he
 2 doesn't know if they even touched those things.
 3 So if it was on there for a year we
 4 would have never got the quality of the latent
 5 print that was on there, and that it was a fresh
 6 print, in my understanding, because why was there
 7 no palms or fingerprints of Mr. Speegle on there
 8 when he handled it two weeks prior to that
 9 incident?
 10 Q. Is there anything significant about
 11 Mr. Speegle's testimony or statements that he had
 12 handled the gun? Does that have any impact on
 13 what latent prints may be found on the gun or may
 14 be created on that gun between the time he touched
 15 it and the time that the police lifted latent
 16 prints from it just after the murder?
 17 A. Yes. He actually got that gun ten
 18 years, or more than ten years, prior to this
 19 incident. And he used that gun for hunting. That
 20 was ten years prior to the incident when he --
 21 because he went and bought bullets, and that sort
 22 of stuff, for that gun.
 23 And it definitely was -- in my opinion,
 24 if it was on there for ten years, or even a year,
 25 you would have never got the quality of the latent

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1 print that was developed and lifted off of there.
 2 Q. Okay. And you also testified earlier
 3 that you had advised trial counsel of the
 4 importance of eliciting testimony from you in
 5 regard to latent prints found on a live round of
 6 .264 ammunition as well as the packaging for .264
 7 ammunition.
 8 What was the significance of that?
 9 What did you tell trial counsel was the
 10 significance of that?
 11 A. Okay. What the significance of that
 12 was, the cartridge -- there was a loaded
 13 cartridge, is what it amounts to, with a left
 14 thumbprint on there. It was an excellent
 15 thumbprint, and this is on brass. And you have to
 16 realize that brass is a soft metal. And if it's
 17 been on there for even a few months, it starts
 18 what they call an etch print. It etches right
 19 into there from the amino acids into the metal.
 20 And you can't lift it off -- all you can do is
 21 photograph it -- if it is on there.
 22 And that is real crucial because, even
 23 the one report that Tina had, she was describing
 24 61-1, that it was a print on the shotgun that was
 25 etched into the shotgun which would indicate

13 (Pages 49 to 52)

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1 that's an old print.
 2 That's the reason it was so crucial
 3 that we bring this out as far as being a fresh
 4 print because of that incident.
 5 And also I read the transcript after
 6 the trial of Mr. Speegle as far as his
 7 understanding that all the bullets and the inserts
 8 were not touched for ten years.
 9 Q. Okay. And you also testified earlier
 10 today that you had advised trial counsel the
 11 importance of eliciting at trial testimony from
 12 you in regard to latents found on the doorknobs.
 13 Could you explain to us what the
 14 significance of that was and what you explained to
 15 trial counsel about why to elicit that evidence
 16 from you?
 17 A. Yes. The doorknobs, you know that they
 18 are fresh because what happens, I explained to
 19 him, that, when you grab a doorknob and turn it,
 20 what you're doing is, you're placing your
 21 fingerprint on there. And if there is somebody
 22 else's, you're putting it on there, and you're
 23 actually erasing it most of the time. Sometimes
 24 you might get another print on there besides the
 25 last person that touched it. But the last person

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1 that touched that doorknob is most likely the
 2 latent print that you're going to find on there
 3 because, when you're turning, you're erasing
 4 what's on there already.
 5 Q. All right. Did Mr. Pangburn elicit
 6 testimony from you in regard to any of these
 7 subject matters: The freshness of prints on the
 8 .264 rifle, the scope, the latents on the
 9 ammunition and the packaging or the freshness of
 10 prints on the doorknobs in this case?
 11 A. No, he did not. Not at any time.
 12 Q. All right. Subsequent to your
 13 testimony at trial, did you have a conversation
 14 with Mr. Pangburn about your trial testimony?
 15 A. Yes, I did.
 16 Q. Okay. And tell us what that discussion
 17 was about.
 18 A. I went up to him and I told him, There
 19 is a lot of fingerprints that we didn't bring out
 20 in court, such as, I explained, the doorknobs.
 21 That was not brought out.
 22 And I believe the insert and the
 23 bullet, the loaded bullet, was not brought out
 24 either as far as Mr. Pangburn never brought it
 25 out.

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1 And I said, you know, It would pay for
 2 me to go back on the stand and bring this out to
 3 the jury.
 4 And he says, I don't think we need it
 5 at this time.
 6 Q. So that was the end of it as far as
 7 you're concerned?
 8 A. That was the end of it, yeah.
 9 Q. So I think it's important for me ask
 10 you a couple more questions on these specific
 11 items, Mr. Kerchusky.
 12 I think that we have talked about the
 13 scope. But I want to talk with more specificity
 14 about the latent prints that were found on the
 15 ammunition and the packaging.
 16 Now, you have had an opportunity to
 17 review the state's reports, and you've also had an
 18 opportunity to review the latent prints and the
 19 inked prints in this case. And now you've had an
 20 opportunity to review the known prints of one
 21 Christopher Kevin Hill?
 22 Do you recall as you sit here today --
 23 MS. LORELLO: Just note for the record, the
 24 witness is nodding his head that he has reviewed
 25 these things that counsel was listing off.

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1 MR. SIMMS: Thank you, Jessica.
 2 Q. BY MR. SIMMS: Do you have any specific
 3 recollection of what latent prints were found on
 4 these various materials, and describe them with
 5 specificity.
 6 A. Okay. On the bullet which was the
 7 loaded cartridge, it was a No. 6 finger which is
 8 the left thumb. Then on the insert where that --
 9 Q. Let's go one at a time.
 10 A. Okay.
 11 Q. Do you know where at the crime scene
 12 this live cartridge was found?
 13 A. I believe, from what I read, it was in
 14 the closet of Mr. Speegle.
 15 Q. All right. Going on to the next item?
 16 A. The next item was the insert which was
 17 18-A. I don't know. It went from 2 through 6.
 18 Q. The numbers aren't important to me.
 19 A. That was identified, I'm guessing at
 20 this point, was on the right hand, I'm sure. But
 21 I don't remember which finger it was. It was
 22 identified against Mr. Hill.
 23 Q. Okay. And what other ammunition or
 24 packaging or boxes?
 25 A. Then there was another insert. It was

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1 a different box, now. That was 16 -- I mean 18-B.
2 And there was an ident made off of that. B-7 I,
3 belief it was. And that was either the 3 or 4
4 finger, I can't remember, which is the right ring
5 or right middle.

6 Q. Okay. And had you been asked about
7 those particular three items -- well, had you been
8 asked about those three items and had you been
9 asked about whether you had an opinion about
10 whether those were fresh prints versus old prints
11 what testimony would you have given?

12 A. Yeah. If they would have asked me
13 that, I would have brought up -- see, at this
14 point we didn't have -- I didn't have the
15 transcript of Mr. Speegle when he testified at the
16 trial.

17 Q. I understand.

18 A. In there he said it was ten years. I
19 was under the impression it was probably one year,
20 is what it comes down to. Because, when the guns
21 were touched, I was going by that. But in his
22 testimony, he said it was ten years that anybody
23 touched the bullets and the inserts. Which, as a
24 hunter, I don't touch them until I go hunting the
25 next year. If I didn't go for five years, I

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1 probably wouldn't touch them anyhow. That's just
2 the way it is. You don't take an inventory of
3 them, is what it comes down to.

4 And it was important to bring it out,
5 even if it was a year. See, the quality has a lot
6 to do with the latent fingerprint.

7 If the latent print has been on there
8 for a year, you wouldn't get the quality that we
9 had here on the latent prints that were developed
10 on those items.

11 Q. All right. Mr. Kerchusky, if a latent
12 print is lifted on an impervious surface item that
13 is exposed to ambient room-type air, how long can
14 that impression last or be lifted?

15 A. There is no way I could give a certain
16 date on there. I'm just going by past experience.
17 There is no written material how long it's going
18 to last because nobody knows.

19 You don't know what the environment is,
20 and all this sort of stuff. But as you mentioned
21 here, I don't think it would last more than a
22 year.

23 If you have an unusual situation, it
24 could last maybe more than a year. But usually a
25 year, and you're still not going to get the

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1 quality that you would -- if I picked this up
2 right now, this water bottle here, if I picked it
3 up here and then went ahead and dusted, I'm going
4 get a quality print because it's fresh. If I let
5 this stand for about a year, am I going to get the
6 same quality as I am right now? No way. Because
7 water and amino -- yeah. Water and the oils from
8 your hand, it would dissipate and dry up over a
9 period of time.

10 Q. Can you give an opinion whether a print
11 can last for more than a year?

12 A. Not really. Only thing is -- we are
13 talking about porous now, not non-porous -- I
14 mean, non-porous, not porous. Yeah.

15 Q. You're answer "not really," do you mean
16 you can't really give an answer?

17 A. I can't say -- if it's going to last a
18 year or more, I don't know because I'm saying,
19 with my experience, usually a year is what I
20 always said was the cut off point that you're not
21 going to get anything.

22 Q. Do you have an opinion about whether a
23 print is going to -- a latent print is going to be
24 more precise, more hard-edged? How can you tell
25 whether a print is a good latent print versus one

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1 that is worn or vague or difficult to see?

2 A. Well, if it's worn or difficult to see,
3 we don't know if somebody slid their finger down
4 through here like this, it's not going to give you
5 a good latent fingerprint; it's just going to be a
6 smudge.

7 But as I explained before, if I pick it
8 up this way, this bottle, I could leave a quality
9 latent print on there because it's a fresh print.

10 Don't forget. As water, if you have it
11 in a glass, it's going to evaporate over time.
12 It's the same thing as a latent print. It's going
13 to evaporate, and there is nothing you can do with
14 it.

15 Q. And as to the doorknobs, do you recall
16 specifically what latent prints were found on the
17 doorknobs around the crime scene in this case?

18 A. Not too much because the doorknobs are
19 fragmentary. You have to realize there is a lot
20 of movement on there.

21 I know there was some palms. And it
22 could have been a couple fingers on there, but I'm
23 not sure at this point exactly what was on there.
24 Different pieces is what I would say they are.

25 Q. And, to your knowledge, have the latent

15 (Pages 57 to 60)

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1 prints that were left on the doorknobs, have any
 2 of them been identified to specific people as of
 3 today?
 4 A. Not as of today, no.
 5 Q. Okay. If you had been asked at trial
 6 whether you had an opinion about whether the
 7 latent print found on the stock of the rifle was
 8 the last person to have touched that gun or the
 9 person who committed the crime, what opinion would
 10 you have rendered?
 11 A. I'd say at this time it most likely
 12 would be the last person that touched it.
 13 Q. Okay. And the same question -- and I
 14 hate to be repetitive, but I'd rather do that than
 15 to forget -- had you been asked that question
 16 about whether you had an opinion about whether the
 17 latent prints found on the ammunition and the
 18 packaging, both the box and the insert, was the
 19 last person to have touched those materials prior
 20 to the murders being committed, what opinion would
 21 you have rendered?
 22 A. Yes. There is no doubt in my mind that
 23 was the last person because of the length of time.
 24 Q. And I know that I asked you the
 25 question as to the scope.

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1 So moving on, have you had an
 2 opportunity to review all the latent print reports
 3 that have been generated -- well, to your
 4 knowledge, that have been generated to date in
 5 regard to Christopher Kevin Hill?
 6 A. Yes, I did.
 7 Q. Maybe I should ask the question
 8 differently.
 9 What reports, if any, have you reviewed
 10 dealing with the more-recently discovered
 11 fingerprints on evidence in the Johnson case?
 12 A. Okay. The idents were made against the
 13 scope -- I mean, yeah, the scope. Three of them
 14 on the scope; one on the stock of the gun, the
 15 .264; one off the cartridge and the insert to the
 16 cartridge; and the 18-B, which is the second box.
 17 The insert was also -- the latent fingerprint from
 18 there that was identified against Mr. Hill.
 19 Q. You read all those reports so far?
 20 A. I read them all, yes.
 21 Q. Have you also reviewed photocopies or
 22 Xerox copies of the latent print lift cards once
 23 again?
 24 A. Photocopies of them?
 25 Q. Any type of copies. I don't know what

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1 you want to call them.
 2 A. Well, I had some photocopies. I
 3 reviewed a palm print. In fact, I got the palm
 4 print before I got the report that they made, an
 5 ident from the state. So I went ahead, and I
 6 checked that out to make sure that it was identified,
 7 and it was. Then I got the report later on
 8 because I got that before they had a report on it.
 9 And then the other stuff, I did not go
 10 into it in depth, but I felt that the state knew
 11 what they were doing as far as making identifications
 12 off of Mr. Hill.
 13 Q. You jumped ahead of me. You agree with
 14 the identifications that were made; that is, that
 15 there was -- a known print was obtained, an inked
 16 print, and there were latent prints that were
 17 found, someone looked at those. And because
 18 they're an expert, they could tell those were the
 19 very same prints, and you agree with that?
 20 A. Yeah. Because I did a generic look at
 21 them and said, yeah, I'm sure that the state knew
 22 what they were doing as far as making those identifications
 23 right there.
 24 Q. Can you describe the quality of the
 25 inked prints that were taken of Mr. Hill that you

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1 have some copy of?
 2 A. Yes. The copies I got were very poor,
 3 and that's the reason why it's difficult to make
 4 comparisons on there. And I don't know what kind
 5 of copies the state have, but the ones I have were
 6 poor copies.
 7 Q. But what you're describing as poor
 8 quality, there was an identification made that it
 9 was, in fact, Christopher Kevin Hill's prints that
 10 were on the rifle scope, it was Christopher Kevin
 11 Hill's prints that were found on the live .264
 12 round?
 13 A. Right, yes.
 14 Q. And it was Christopher Kevin Hill's
 15 palm print that was found on the stock of the .264
 16 rifle that had been used to commit the murders?
 17 A. Yes.
 18 Q. And it was Christopher Kevin Hill's
 19 prints that were found on the plastic insert that
 20 held live rounds of ammunition?
 21 A. Yes.
 22 Q. And apparently held some of -- maybe
 23 the two live rounds that had been used to kill
 24 Mr. and Mrs. Johnson?
 25 A. Yes. They could have been, yes.

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1 Q. So I'm going to go back through these
2 again, and I want to talk a little bit more about
3 fresh prints versus old prints.

4 Now, do you have any opinion about
5 whether a print left on a metal surface, how long
6 it would take for that print to become an etched
7 print versus a print that can be lifted, as you
8 described earlier in the deposition?

9 A. Yes. An etched print, depending on the
10 surface -- now, on brass it only takes a few
11 months because it's a softer metal.

12 Now, as far as on a steel surface such
13 as a gun or a scope, it probably would take maybe
14 almost a year for it to etch into that metal, is
15 what it comes down to.

16 Q. I'm understanding you to say that at
17 some point in time a latent print that's left, the
18 oil and the sweat, I suppose, evaporate. But
19 because of there being acid in those secretions,
20 that it begins to eat into the metal?

21 A. Yes, that's correct.

22 Q. Okay. Was the print that was found on
23 the scope a latent -- well, was it an etched
24 print? I think that's the only language I have to
25 describe it at this point.

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1 A. Yes -- no, it was not an etched print.
2 It was fresh print, is what it comes down to. It
3 was one they could lift off. If you have an
4 etched print, you can't lift it off. You have to
5 photograph it.

6 Q. Okay. Do you have any opinion, based
7 on that, of whether that print was a year or more
8 old?

9 A. Well, I would say that the print on
10 that scope -- are you talking about the scope now?

11 Q. Yes, sir, the scope.

12 A. I'd say that -- what I went through and
13 explained all the way through with this is that it
14 has to be a fresh print.

15 Q. All right. As to the live .264
16 round --

17 A. Yes.

18 Q. -- what type of metal is that live
19 round encased in?

20 A. It's encased in brass.

21 Q. Okay. And you described earlier that
22 brass is a softer metal and therefore a print will
23 become an etched print more quickly.

24 Based on the fact that that was a
25 lifted print and not an etched print, do you have

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1 an opinion about the age of the print that was
2 found on that .264 live round?

3 A. It has to be a fresh print.

4 Q. Okay. Now, as to the plastic insert
5 and the stock of the .264, I presume that the
6 stock was either metal or plastic. Do you know
7 whether it was -- excuse me -- wood or plastic?

8 A. As far as I know -- I never seen it,
9 per se, myself. I looked through the plastic, and
10 it appears to be a wooden stock.

11 Q. When you say you looked through the
12 plastic, was it in a bag when you were given an
13 opportunity to at least view the item of evidence?

14 A. Yes.

15 Q. Okay. Does a wooden surface -- well,
16 let me retract that.

17 Did it appear there was anything
18 painted over the wooden surface?

19 A. Yes. You have to have shellac or some
20 kind of finish on it. That's the reason why it
21 would last longer. Now, if it was just a wood
22 surface with no paint or shellac on it, it
23 wouldn't last hardly any time at all. You'd have
24 to process it with ninhydrin because it would be
25 porous. It would go into the wood.

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1 Q. I understand. What type of print was
2 it that was found on the stock of the .264?

3 A. That was a palm print, a left palm
4 print.

5 Q. I mean, how was it obtained? Was it
6 obtained with ninhydrin being an etched print, as
7 I'm understanding you, or was it lifted from
8 the --

9 A. It was lifted off there.

10 Q. Okay. And do you have any opinion
11 about the age of that print?

12 A. Yes. Most likely it was a year -- I
13 mean, mostly it was a fresh print, not a year old.

14 Q. Okay. So year or less old?

15 A. It was a year probably before anybody
16 touched that, is what it comes down to. That's
17 what we were talking about all along. So in my
18 opinion, it most likely was a fresh print.

19 Q. All right. As to the plastic insert,
20 again, what type of print was -- how was that
21 print lifted from the plastic insert?

22 A. I assumed that they Super Glued it and
23 lifted it. And that was a fresh print because --
24 don't forget. That was allegedly not touched for
25 ten years.

17 (Pages 65 to 68)

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1 Q. Okay. And what were the quality of the
2 latent prints that were taken from each of these
3 items, the four items, that we are discussing
4 right now?

5 A. The quality was real good quality. It
6 was -- for latent prints I couldn't ask, as far as
7 I am concerned, a better quality.

8 Q. Okay. And how does that bear on your
9 opinion of whether these are fresh prints or aging
10 or older prints?

11 A. As I mentioned before, any time you
12 have a good quality print of that sort, it has to
13 be a fresher print than an old print, is what it
14 amounts to, even though we know what the
15 guidelines were because of the time that it was
16 handled and all that sort of thing, the scenarios
17 that come into it.

18 Q. Okay. And based on everything you have
19 talked about here today; that is, based on the
20 quality of the print that was taken, the method by
21 which the print was taken, the fact that none of
22 these prints were etched prints, based on all of
23 your training and experience over these 50-some
24 years, do you have an opinion, again, that you can
25 render as to the last person to have touched these

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1 THE WITNESS: As you know, I'm Bob
2 Kerchusky.

3 Q. BY MS. LORELLO: Yes. Anyway, I see
4 you have a couple notebooks. Are those materials
5 that you looked at in preparation for today?

6 A. Yeah. I brought them along in case you
7 had questions about a few things. I just brought
8 them along in case you needed to know where I was
9 coming from, is what it amounts to.

10 Q. Can you tell me what's in them?

11 A. There is a lot of reports from -- and
12 also copies of the -- say, like the grand jury
13 hearing on Mr. Stu Robinson, about him testifying
14 about there was no latent fingerprints; I have
15 those copies.

16 I have copies also of the etched print
17 that we talked about which is 61-1 that Tina
18 Walthall wrote up, you know, this report on there;
19 and basically that's what I had down. And I also
20 have the grand jury copy of Mr. Speegle about ten
21 years. And I brought it in case somebody wanted
22 to see where I was coming from.

23 Q. Do you have any notes that you prepared
24 in relation to the case?

25 A. Not here, no.

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1 four items of evidence: The .264 rifle, the
2 scope, the insert, and the live round?

3 A. Yes. In my opinion, they are fresh
4 prints that were left on those items.

5 Q. By?

6 A. By Mr. Hill, yeah.

7 Q. Thank you. That's all the questions I
8 have for you right now.

9 MS. LORELLO: Do you need a break at all?

10 THE WITNESS: Let me get a drink.

11 MR. SIMMS: Do you want to take a
12 five-minute break?

13 THE WITNESS: No, that's fine. I just need
14 to wet my throat here a little bit.

15
16 EXAMINATION

17 BY MS. LORELLO:

18 Q. I'm sorry. I don't think I introduced
19 myself in the hall. I am Jessica Lorello. I am
20 with the attorney general's office.

21 MR. SIMMS: I'm sorry. I didn't make an
22 introduction.

23 MS. LORELLO: That's okay.

24 MR. SIMMS: That's not a gentlemanly move.
25 I don't know how I blew that one.

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1 Q. Okay.

2 A. All reports. Actually, I didn't write
3 anything up at this time because I'm not actually
4 getting paid for what I'm doing. All I'm doing is
5 helping review everything and whatnot. But I
6 haven't written anything up.

7 Q. I understand. You mean you haven't
8 written anything up in relation to the
9 post-conviction case?

10 A. No.

11 Q. Have you written up anything at all in
12 relation to the criminal case?

13 A. When I went to court, I did write a few
14 items up, yes, ma'am.

15 Q. Like a formal report?

16 A. Yes.

17 Q. Okay. Did you have any notes that you
18 made that you kept?

19 A. No.

20 Q. Okay. Just the reports that you
21 prepared --

22 A. That's it.

23 Q. -- at trial?

24 Do you remember how many reports you
25 prepared?

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1 A. Well, I think it was only about two or
2 three.
3 Q. Two or three?
4 A. Yes.
5 Q. Do you still have those?
6 A. I could, but do you want a copy of
7 them?
8 Q. I know I have one. I'm just curious if
9 you prepared any other reports.
10 A. Two is about all I could remember if I
11 even wrote that many up. Because I didn't -- I
12 didn't write anything up as far as other than what
13 my findings were. That's about all.
14 Q. Right.
15 A. That was all I wrote.
16 Q. You think you did two of those?
17 A. I could have. I'm guessing again
18 because it's five years. I know I wrote one up.
19 Q. Right.
20 A. Maybe there is two. I don't know. I'd
21 have to go all the through that, a stack of stuff
22 this high from everything.
23 Q. You don't know if any of your reports
24 are in the materials you brought today?
25 A. They could be, but I don't have them

1 A. A fresh print is one that's left within
2 a -- say, within weeks to may be a month is a
3 fresh one. I would say weeks.
4 Q. Weeks?
5 A. Yeah, uh-huh.
6 Q. Do you have any idea how many weeks?
7 A. No. There is no way I could give you a
8 time period. Fresh means -- probably two or three
9 weeks would be when the fresh print would be at
10 its best. After that it starts dissipating and
11 going downhill after that.
12 Q. Okay. You also talked a little bit
13 about different fingerprint databases. I think
14 you AFIS and WIN --
15 A. Yes.
16 Q. -- are two?
17 A. Yes.
18 Q. Can you tell me a little bit more about
19 those databases? What I mean by that, do
20 different companies or organizations run those?
21 A. No. Here is the way it works. Idaho
22 has their own system. They lease it from Nippon
23 Electric Corporation. Actually, I and my
24 supervisor brought this AFIS system into effect in
25 '89, is what it comes down to. And we got six

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1 copied or I'd have to go through looking for them.
2 I don't know even if I brought them, really,
3 because basically this is all the stuff that the
4 state -- I got from the state. I didn't bring
5 any, I don't think, my reports, really.
6 Q. Okay.
7 A. At this point.
8 Q. Okay. We talked a little bit, or you
9 and counsel talked a little bit about your
10 affidavit. Did you draft that affidavit?
11 A. I wrote things down that should be
12 brought out, and he's the one that -- Mr. Simms is
13 the one that actually drafted that thing, is what
14 it amounts to.
15 Q. Okay. I have a couple questions about
16 etched prints and other kind of fingerprint
17 things, which, I don't know about other than what
18 you've taught me.
19 How long does an etched print last?
20 A. It could last forever.
21 Q. I think you said how long it takes to
22 create one depends on the surface?
23 A. Yes.
24 Q. Okay. And can you tell me what you
25 mean by a fresh print?

1 states from -- that surround us to go in on the
2 leasing part of it. That's WIN. Western
3 Identification Network is what it comes down to.
4 And you could search your state by itself, or you
5 could search WIN. So you could do it either way.
6 Or you could even pick out a state. Say you
7 figure Wyoming is where this guy came from. You
8 could search Wyoming too.
9 But then they have -- this AFIS system
10 also has the ability to search Washington,
11 California. And I understand now that they also
12 have Alaska, but that was after I left.
13 Now the FBI has one. They have a
14 national one. In other words, all of the
15 fingerprints, arrests that we have on felonies,
16 they go to the FBI. Same as all the other states.
17 So they have a national database there of all the
18 states that they have arrests on.
19 Q. Okay.
20 A. And you can get a search there. I
21 don't know if the state has the capabilities of
22 doing it now or not. I don't know at this point.
23 Q. So the WIN would be a database that
24 covers six states, the six states that lease it?
25 A. Yes.

19 (Pages 73 to 76)

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1 Q. So would the fingerprints that are in
2 WIN just be there based on whatever was provided
3 by the states, those six states?
4 A. Exactly. Each state puts their own
5 prints in. So they have their own databases. So
6 if you get a hit from another state, you have to
7 call that other state to get a copy of the ink
8 fingerprint to make a comparison on.
9 Q. And is AFIS, then, the same thing with
10 different states?
11 A. AFIS is an Automated Fingerprint
12 Identification System. That's the system. It's
13 not saying what state, what network, or anything.
14 Just that's the system.
15 Q. Okay. And then there is the FBI
16 database?
17 A. Yeah, they have one.
18 Q. And where does the FBI get their prints
19 from?
20 A. From everybody. From all the states.
21 All the states that have felony arrests, they go
22 to the FBI.
23 Q. Do you know if that's required?
24 A. Oh, yeah.
25 Q. So any felony print taken in Idaho or

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1 any other state automatically goes to the FBI?
2 A. Yeah, it has to. That's been going on
3 forever, as far as that goes.
4 Q. Okay.
5 A. Ever since 1952 anyhow.
6 Q. That's long enough. That covers all
7 the time we are talking about.
8 All right. I'm going to ask for
9 clarification in terms of what you wanted in
10 relation to the Johnson case and what you got.
11 A. Okay. What I wanted was -- there was a
12 lot things I wanted. Let me tell you what I got,
13 is what it amounts to, okay?
14 Q. Well, I want to know the first part
15 first, what you asked for.
16 A. Okay. I asked for all the reports as
17 far as forensics were concerned, fingerprints,
18 everything they had.
19 Q. Just on the fingerprints. So that
20 doesn't include any police reports that were
21 prepared?
22 A. Well, I did get all those too.
23 Q. You did get those?
24 A. I did get -- the grand jury hearings is
25 what it comes down to. Mostly all grand jury.

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1 Q. The grand jury transcripts?
2 A. Transcripts. I'm sorry.
3 Q. What about the police reports?
4 A. I believe I got some too, but I'm not
5 sure. But there was -- there might have been a
6 few in there, but I can't remember for sure if I
7 did or not.
8 Q. Do you know if you asked for all police
9 reports?
10 A. I believe I asked for all the reports I
11 could get, is what it comes down to. They brought
12 everything over. As far as the grand jury
13 transcripts was concerned, I did get all those.
14 Q. Okay. So what else do you recall?
15 A. Then I asked for -- I asked for all the
16 inked known fingerprints. That means from
17 everybody that they took ink fingerprints.
18 Q. And you got those?
19 A. I got them at different times.
20 Q. Okay.
21 A. They all didn't come in at the same
22 time.
23 Q. I understand.
24 A. Then I asked for the latent
25 fingerprints.

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1 Q. And you got those?
2 A. And I got those. But that was, I
3 think, different times, too, maybe.
4 Q. I understand.
5 A. And then I asked to see the evidence,
6 such as the gun and the scope and all -- that I
7 wanted to see if they were marked like I explained
8 before with the markings and so forth. And I
9 asked for -- to see them because I wanted to see
10 where they came from, off the scope and all that
11 sort of thing, to see if they marked them on
12 there. And then I asked for all the tape -- you
13 know, of the crime scene. I wanted to see what
14 the crime scene looked like, which I never did
15 receive that. In fact, the only thing I seen was
16 the gun as far as the evidence was concerned. I
17 asked to look at the evidence that they -- where
18 they recovered the latents from. All I seen was
19 the gun, and that was right before the trial.
20 Q. So when you had asked to see the
21 evidence, what do you mean by that? Do you just
22 want to look at it?
23 A. I do in case there is something that's
24 real important. Then I'd like to get a copy of
25 it. Once I get a copy of everything, I don't need

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1 it unless it's something that I feel is important.

2 Q. Okay. Did you want to test any of the
3 evidence?

4 A. I wouldn't have -- it would have helped
5 maybe, but I never had that opportunity either.

6 Q. Did you ask to test it?

7 A. I believe I did say, well, you know, it
8 would have been good if we could have. But I'm
9 not going to push for it, is basically what I said
10 at that time.

11 Q. If a particular piece of evidence has
12 been tested for fingerprints and fingerprints have
13 been lifted, can you retest it?

14 A. Well, all depends on the test that they
15 did. In other words, if they -- suppose they put
16 ninhydrin on something and then I wanted to Super
17 Glue and try it, it's not going to work. So a lot
18 of that evidence I couldn't redo it anyhow, is
19 what it comes down to. Because I think they used
20 just about everything they could on all that
21 evidence. And at that point it was pretty much
22 saturated with everything. It would pretty hard
23 to get latents off of it. But I still would have
24 liked to have seen it for my own curiosity, I
25 guess.

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1 Q. I think you said something about there
2 was a right middle and a ring finger fingerprint
3 on the scope?

4 A. Right.

5 Q. And, then, I also thought at a
6 different time you testified that it's not
7 necessarily easy to distinguish what finger on
8 somebody's hand left a particular print?

9 A. That's if you don't know -- if you make
10 an identification, you don't know what finger it
11 is.

12 Q. Okay. So you --

13 A. But when an identification is made,
14 then you know what finger it is.

15 Q. So your comments about the right middle
16 and the ring finger were because --

17 A. -- we knew who it belonged to, yeah.

18 Q. Is that same thing true? You were
19 talking about a left thumbprint on the cartridge?

20 A. Yes, because the ident was made on
21 there. If we don't make an ident, we don't know
22 who it belongs to.

23 Q. Or you don't know which thumb it is?

24 A. We don't know what finger, who it
25 belongs to, or anything, yeah.

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1 Q. That's what I thought. I just wanted
2 to make sure I understood that.

3 A. Yeah.

4 Q. And then you said that your opinion is
5 that Christopher Hill was the last person to touch
6 the scope prior to the murder?

7 A. Yes, ma'am.

8 Q. Is that right?

9 A. Yes, ma'am.

10 Q. And can you explain that opinion to me
11 again? I'm not sure I understood.

12 A. It wasn't an etched print, first of
13 all --

14 Q. Right.

15 A. -- which means that it is most likely a
16 real fresh one. But when we -- when I could
17 determine the way it was handled, in other words,
18 that person holding it this way (indicating), not
19 picking it up this way, that wasn't handled for a
20 year, it would have etched into there, then I know
21 that that was Mr. Hill who handled that gun when
22 he took that scope off. That was my opinion.

23 Q. If somebody had touched the scope with
24 gloves afterwards, would that change your opinion?

25 A. Well, let's put it this way. Was there

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1 any glove marks on the scope? I don't know. I
2 wasn't there. But if there was glove marks, then
3 that would be an indication that somebody touched
4 it with gloves on.

5 Q. What do you mean by glove marks?

6 A. In other words, if I have a glove, a
7 lot of times I'll find glove marks when somebody
8 is breaking into a house. I could see it on --
9 when you dust it, you bring it up a lot of times.

10 Q. So, for example, the scope was -- do
11 you know if the scope was dusted in this case? Is
12 that how the prints were taken?

13 A. As far as I know, I think it was Super
14 Glued and dusted.

15 Q. Super Glued and dusted?

16 A. Yes. That's the proper way of doing
17 it.

18 Q. Okay. And would that have shown glove
19 marks?

20 A. It should. It should. You know, a lot
21 of times it will show the glove marks on there.

22 Q. But not all the time?

23 A. I would say there might be a time or
24 two it won't. But most of the time it will.

25 Q. What does it look like?

21 (Pages 81 to 84)

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1 A. Like a smudge. You could tell -- it
 2 will be creases in that glove mark, is what it
 3 comes down to. Not like a smudge like I go like
 4 this. That would have, like, little creases,
 5 maybe, and so forth, showing it's a glove.
 6 Q. Okay. And then in relation to
 7 Christopher Hill's prints, I think you said -- and
 8 correct me if I am wrong -- that the state knew
 9 what it was doing when it made the identifications
 10 on the Hill prints?
 11 A. Yes. Because what happens is, when you
 12 make an ident, the state will have somebody verify
 13 it to make sure that it is made by one and the
 14 same person.
 15 Q. Okay.
 16 A. And that it is identical; do you see
 17 what I'm saying? It's a peer review, is what it
 18 amounts to.
 19 Q. You think they did that correctly?
 20 A. Oh, yeah.
 21 Q. But then you also said that you got
 22 copies of ink prints on Mr. Hill?
 23 A. Right.
 24 Q. Which are poor?
 25 A. They were poor, yeah.

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1 Q. But that doesn't change your opinion on
 2 the accuracy of the identification of Mr. Hill in
 3 the first place?
 4 A. No. I told you I made the ident on the
 5 palm print before I got the report. I wanted to
 6 make sure that the palm print was identical on
 7 that stock of that gun.
 8 Q. Okay.
 9 A. The palm print was better in a sense
 10 than the fingerprints. They didn't get a hit on
 11 one finger that was run through AFIS. And a lot
 12 of times you don't get hits, let's face it. And
 13 the reason why they didn't get a hit, that
 14 thumbprint was a very poor value. So that print,
 15 even though it was an outstanding latent print,
 16 will never hit that poor value of an ink
 17 fingerprint.
 18 Do you follow what I'm saying?
 19 Q. I'm trying. I'm just trying to figure
 20 out where your comment about the poor quality of
 21 the ink prints fit into what you're saying
 22 otherwise.
 23 A. Well, otherwise, yeah. What I am
 24 saying is, they probably have better quality
 25 prints than I have because all I have is a copy

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1 from a copy machine.
 2 Q. Of Christopher Hill's ink prints?
 3 A. Yes. That's all I have. I don't have
 4 the original. Let's call it the original.
 5 Q. Okay.
 6 A. And I'm sure, before they made the
 7 identification, they were sure that they were
 8 identical.
 9 Q. Okay.
 10 A. They are not going to write -- and
 11 don't forget, AFIS hit on two of them, anyway,
 12 right away. The only one it didn't hit on, which
 13 was probably as good of any of them, was that
 14 thumbprint off that bullet. And the reason why, I
 15 couldn't even make a comparison with the copy I
 16 had. I could, but it would be real fuzzy because
 17 the copy I have is fuzzy.
 18 Q. So. Even though you couldn't do it
 19 because you had a poor copy, you think that
 20 they --
 21 A. -- had a better quality print.
 22 Q. -- when they did the identification?
 23 A. I'm sure they did, yeah.
 24 Q. When you were talking about an AFIS
 25 hit, does that correlate with your comments about

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1 a high score, or are those two different things?
 2 A. Okay. Let me -- I probably got you
 3 confused.
 4 Q. That's not hard to confuse me.
 5 A. A high score means this: If you have
 6 one that's outstanding and you run it against one
 7 that's in the file that's outstanding, okay,
 8 they're real great prints, it will probably come
 9 up 9999 which means the highest score you can get.
 10 Q. Where is that score coming from?
 11 A. That's coming from the system.
 12 Q. From AFIS?
 13 A. From the computer. Not AFIS. The
 14 computer.
 15 Q. Okay.
 16 A. Okay. That 9999 score, you're almost
 17 positive it's going to be an ident, but you do
 18 your peer review to make sure it is.
 19 I've made idents as low as 0079, and
 20 they were nine or ten candidates. So that doesn't
 21 mean the score is going to have anything to do
 22 with the ident that you are going to make. It all
 23 depends what the system is going to pick out for
 24 you. Don't forget, the system picked these out.
 25 Q. Right.

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1 A. Even so, the system might miss them, as
2 far as that goes. It could miss them, I should
3 say.
4 Q. Is there a standard practice on what
5 you would do the peer review on or what scores you
6 would need in order to do a peer review?
7 A. If you are making an ident, you always
8 have a peer review on it. In other words, if I
9 make an ident and he's my supervisor, I'd go up to
10 him and say, I made an ident on John Doe's finger
11 so-and-so. And he would go ahead and compare it
12 and say, I concur with your findings.
13 Q. I guess what I'm trying to figure out
14 is how do you decide what to compare with.
15 A. What to compare with?
16 Q. When you're putting a fingerprint into
17 the system to see if you get a hit, do you just
18 look at whatever the computer says or the system
19 says is a hit?
20 A. The system just gives you candidate
21 lists, I keep telling you that. It doesn't tell
22 you it's a hit. What you do is, you have a panel
23 here and a panel here. And then you look at the
24 latents to the ink fingerprint and see if you have
25 enough there. Okay.

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1 If you feel that you have an ident or
2 you have enough there to take a look, you pull the
3 original ink fingerprint card of who it belongs to
4 and the latent print, then you do your
5 comparisons.
6 Don't forget, the prints that you have
7 there, you have to make it a side-by-side
8 comparison. That machine is not going to do you
9 any good, let's put it that way. Other than 999
10 maybe it will.
11 Q. Does the machine give you the candidate
12 list?
13 A. Yeah. Then you go back and compare
14 them.
15 They do it different than when I was
16 there. When I was there, I took up all the -- I
17 had where we would take out all ten candidates,
18 and I'd compare them myself because I felt I was
19 more qualified to do it.
20 Q. Because I'm slow, tell me again how the
21 score fits into what you just told me.
22 A. Okay. The score -- the system will
23 pick out ten prints it feels are identical.
24 Q. And that is your candidate list?
25 A. That's the candidate list. Those ten,

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1 you could either compare it on both screens to
2 match to see if they are made by one and the same,
3 okay?
4 Q. Okay.
5 A. And if you feel they're a match, then
6 you go to your file and pull out your ink
7 fingerprint card, which they have files and files
8 of them. You pull it up, and you go ahead and
9 compare the latent print you have against there to
10 make sure that they are.
11 Q. That's where the score comes in?
12 A. The score has nothing to do with that,
13 no, no, no. The score is only for -- the system
14 uses that score to kick out the prints they feel
15 they are idents. It has nothing to do with the
16 ident. The ident is making the comparison from
17 the ink fingerprint to the latent fingerprint.
18 Q. So the candidate list is based on the
19 score that the system does?
20 A. Yeah. You're getting the highest score
21 that the system found these as, okay? That's all
22 you have is the score that might go from --
23 Q. That's what I thought.
24 A. -- 999 all the way down to so-and-so.
25 But, no, it would probably go from like 5,000

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1 maybe down to 1,000, say.
2 Q. Okay.
3 A. But it's not telling you it's a hit.
4 All you're doing is comparing them. And the last
5 one on the list could be the one that is actually
6 the hit, is what I'm saying.
7 Q. Okay. Which could be a low score?
8 A. It could be a low score. Oh, yeah. It
9 could be a low score.
10 Q. So I guess that's what I was trying to
11 determine if there is -- if there is a scoring
12 range that the candidate list is based on.
13 A. In a sense you're right. It picks out
14 the ten top candidates.
15 Q. Okay.
16 A. But the scores --
17 Q. The ten top candidates?
18 A. Yeah. And that's the score -- they are
19 basing on this score that the system kicked out.
20 Q. Can you get more than the top ten?
21 A. Yeah. You could take a thousand, if
22 you wanted to spend all day on them.
23 Q. But it's generally the top ten?
24 A. Well, I don't know what they use now.
25 When I was there it was ten.

23 (Pages 89 to 92)

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1 Q. Okay. Paragraph 8 of the affidavit
2 that you signed says that, (Reading:) Subsequent
3 to the trial hereof, I discovered that at least
4 seven latent prints lifted from evidence found at
5 the crime scene, not just the three fingerprints
6 run through Idaho State AFIS by police
7 investigation, met the criteria to be searched for
8 match on Idaho State AFIS, WIN, and FBI
9 fingerprint database.
10 A. Yes.
11 Q. What does that mean, "met the
12 criteria"?
13 A. Okay. In other words, some of the
14 prints you can't put in there. I'll try and be as
15 simple as I could. It's core access. In other
16 words, on the loop it goes like bobby pins, one on
17 top of the other, like this. Right in the middle
18 of that is the core area.
19 If I don't have that core area, in
20 other words, if that's cut off, I don't know where
21 to start my search at.
22 Q. Okay.
23 A. You have to have a focus point to start
24 your search. And if you don't have that focus
25 point, it's hard to search it, is what it amounts

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1 to. But you have to have a focus point for that
2 system to be able to search it. It can't do it
3 just by picking it out that way. You have to go
4 by the core. And the core could be off maybe six
5 ridges, but it will still pick it out. But maybe
6 beyond that point, it can't pick it out at all, is
7 what it comes down to.
8 Q. Your statement here, is that based on
9 what Ms. Eguren told you?
10 A. She said that there was more there, but
11 she didn't go into specifics, as far as that. But
12 that was what my understanding was when I seen
13 them.
14 Q. Okay. So what seven are you talking
15 about?
16 A. Well, let's say put it this way. I'd
17 have to look at them all to make sure because --
18 don't forget, they identified the three other ones.
19 Don't forget, we had six ident. So that was part
20 of that group.
21 Then there was one on 41. I don't know
22 if that was from the door. I think it was from
23 the door. It was a good latent print on there.
24 There was also another one, I think, on 13, which,
25 I thought was a shower door.

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1 There was quite a few of them. In
2 fact, I think from the inserts for the bullets,
3 there was at least two or three from each one of
4 those, as far as that goes.
5 Q. Okay. Did you -- I know you said you
6 asked for a copy of the video of the crime scene?
7 A. Yes, ma'am.
8 Q. Did you ask for copies of the
9 photographs?
10 A. I did see a few of them, but I don't
11 think I seen them all. I think it was about the
12 gun, is what it amounts to. I seen a few
13 photographs. I didn't see them all.
14 Q. So you think you only saw photographs
15 of the gun?
16 A. That's about it, yes, ma'am.
17 Q. You don't recall seeing any photographs
18 of anything else?
19 A. Not much, no. That was about it.
20 Q. But did you ask for photographs of the
21 other stuff?
22 A. I did. At the beginning I asked for
23 them, but I guess I figured that it wasn't going
24 to come. So I didn't push it any further, is what
25 it amounts to.

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1 Q. Okay.
2 MS. LORELLO: That's all I have.
3 MR. SIMMS: I have got just a couple more to
4 follow up on what Ms. Lorello just asked you.
5
6 FURTHER EXAMINATION
7 BY MR. SIMMS:
8 Q. She asked about the significance of
9 higher-quality inked prints. Do you think, if you
10 had original major case prints that were done
11 correctly by a police officer or a fingerprint
12 technician, could it possibly enable you to make
13 additional identifications of some of the latent
14 prints that we continue not to know who left them?
15 A. Yes.
16 Q. And then there was question I had
17 forgotten to ask you earlier, and that is, did you
18 advise trial counsel to attempt to obtain a court
19 order to run additional latent fingerprints that
20 you felt met the criteria through the AFIS system?
21 A. Yes, I did.
22 Q. Do you know whether he did that or
23 tried to do that?
24 A. I don't know. All I did is request.
25 If they don't do it, I don't push if any further.

V E R I F I C A T I O N

STATE OF IDAHO)
)
County of Ada)

I, ROBERT KERCHUSKY, being first duly
sworn on my oath, depose and say:

That I am the witness named in the
foregoing deposition, taken on 8/27/2009,
consisting of pages numbered 1 to 99, inclusive;

That I have read the said deposition and
know the contents thereof; that the questions
contained therein were propounded to me; that the
answers to said questions were given by me, and
that the answers as contained therein (or as
corrected by me therein) are true and correct.

DEPONENT

Signed and sworn before me this _____ of _____, _____.

NOTARY PUBLIC

Residing at

My commission expires

Job No. 23688

R E P O R T E R ' S C E R T I F I C A T E

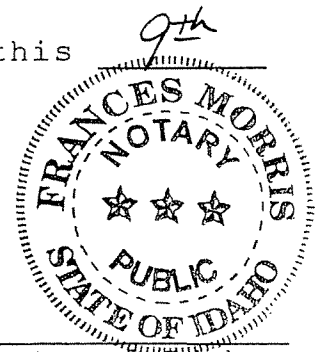
I, Frances J. Morris, a Notary Public in
and for the State of Idaho, do hereby certify:

That prior to being examined, the
witness named in the foregoing deposition was by
me duly sworn to testify the truth, the whole
truth, and nothing but the truth;

That said deposition was taken down by
me in shorthand at the time and place therein
named and thereafter reduced into typewriting
under my direction, and that the foregoing
transcript contains a full, true, and verbatim
record of the said deposition.

I further certify that I have no
interest in the event of the action.

WITNESS my hand and seal this 9th
day of September, 2009.



Frances Morris
NOTARY PUBLIC in and for the State of Idaho;
residing at Boise, Idaho.

My commission expires September 1, 2010
CSR No. 696

1020

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1 Q. Okay. That's all I have.
2 (End of proceeding.)
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1 REPORTER'S CERTIFICATE

2
3
4 I, Frances J. Morris, a Notary Public in
5 and for the State of Idaho, do hereby certify:

6 That prior to being examined, the
7 witness named in the foregoing deposition was by
8 me duly sworn to testify the truth, the whole
9 truth, and nothing but the truth;

10 That said deposition was taken down by
11 me in shorthand at the time and place therein
12 named and thereafter reduced into typewriting
13 under my direction, and that the foregoing
14 transcript contains a full, true, and verbatim
15 record of the said deposition.

16 I further certify that I have no
17 interest in the event of the action.

18 WITNESS my hand and seal
19 September 9, 2009.
20
21
22

23 NOTARY PUBLIC in and for the State of Idaho;
24 residing at Boise, Idaho.

25 My commission expires 9/01/2010
CSR No. 696

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1 VERIFICATION

2
3 STATE OF IDAHO)
4)
5 County of Ada)
6
7

8 I, ROBERT KERCHUSKY, being first duly
9 sworn on my oath, depose and say:

10 That I am the witness named in the
11 foregoing deposition, taken on 8/27/2009,
12 consisting of pages numbered 1 to 99, inclusive;

13 That I have read the said deposition and
14 know the contents thereof; that the questions
15 contained therein were propounded to me; that the
16 answers to said questions were given by me, and
17 that the answers as contained therein (or as
18 corrected by me therein) are true and correct.
19

20 DEPONENT

21 Signed and sworn before me this of , .
22

23 NOTARY PUBLIC
24 Residing at
25 My commission expires

Job No. 23688

25

25 (Pages 97 to 99)

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'BADLY FRAGMENTED' FORENSIC SCIENCE SYSTEM NEEDS OVERHAUL; EVIDENCE TO SUPPORT RELIABILITY OF MANY TECHNIQUES IS LACKING

WASHINGTON -- A congressionally mandated report from the National Research Council finds serious deficiencies in the nation's forensic science system and calls for major reforms and new research. Rigorous and mandatory certification programs for forensic scientists are currently lacking, the report says, as are strong standards and protocols for analyzing and reporting on evidence. And there is a dearth of peer-reviewed, published studies establishing the scientific bases and reliability of many forensic methods. Moreover, many forensic science labs are underfunded, understaffed, and have no effective oversight.

Forensic evidence is often offered in criminal prosecutions and civil litigation to support conclusions about individualization -- in other words, to "match" a piece of evidence to a particular person, weapon, or other source. But with the exception of nuclear DNA analysis, the report says, no forensic method has been rigorously shown able to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source. Non-DNA forensic disciplines have important roles, but many need substantial research to validate basic premises and techniques, assess limitations, and discern the sources and magnitude of error, said the committee that wrote the report. Even methods that are too imprecise to identify a specific individual can provide valuable information and help narrow the range of possible suspects or sources.

"Reliable forensic evidence increases the ability of law enforcement officials to identify those who commit crimes, and it protects innocent people from being convicted of crimes they didn't commit," said committee co-chair Harry T. Edwards, senior circuit judge and chief judge emeritus of the U.S. Court of Appeals for the District of Columbia Circuit. "Because it is clear that judicial review alone will not cure the infirmities of the forensic science community, there is a tremendous need for the forensic science community to improve."

Strong leadership is needed to adopt and promote an aggressive, long-term agenda to strengthen forensic science, the report says. To achieve this end, the report strongly urges Congress to establish a new, independent National Institute of Forensic Science to lead research efforts, establish and enforce standards for forensic science professionals and laboratories, and oversee education standards. "Much research is needed not only to evaluate the reliability and accuracy of current forensic methods but also to innovate and develop them further," said committee co-chair Constantine Gatsonis, professor of biostatistics and director of the Center for Statistical Sciences at Brown University. "An organized and well-supported research enterprise is a key requirement for carrying this out."

To ensure the efficacy of the work done by forensic scientists and other practitioners in the field, public forensic science laboratories should be made independent from or autonomous within police departments and prosecutors' offices, the report says. This would allow labs to set their own budget priorities and resolve any cultural pressures caused by the differing missions of forensic science labs and law enforcement agencies.

The report offers no judgment about past convictions or pending cases, and it offers no view as to whether the courts should reassess cases that already have been tried. Rather, the report describes and analyzes the current situation in the forensic science community and makes recommendations for the future.

CERTIFICATION AND ACCREDITATION SHOULD BE MANDATORY

Many professionals in the forensic science community and the medical examiner system have worked for years to achieve excellence in their fields, aiming to follow high ethical norms, develop sound professional standards, and ensure accurate results in their practice. But there are great disparities among existing forensic science operations in federal, state, and local law enforcement agencies. The disparities appear in funding, access to analytical instruments, and availability of skilled and well-trained personnel; and in certification, accreditation, and oversight. This has left the forensic science system fragmented and the quality of practice uneven. Except in a few states, forensic laboratories are not required to meet high standards for quality assurance, nor are practitioners required to be certified. These shortcomings pose a threat to the quality and credibility of forensic science practice and its service to the justice system, concluded the committee.

Certification should be mandatory for forensic science professionals, the report says. Among the steps required for certification should be written examinations, supervised practice, proficiency testing, and adherence to a code of ethics. Accreditation for laboratories should be required as well. Labs should establish quality-control procedures designed to ensure that best practices are followed, confirm the continued validity and reliability of procedures, and identify mistakes, fraud, and bias, the report says.

Setting standards for certification and accreditation should be one of the responsibilities of the new National Institute of Forensic Science recommended in the report. The institute should work with the National Institute of Standards and Technology, government and private labs, Scientific Working Groups, and other partners to develop protocols and best practices for forensic analysis, which

should inform the standards.

Existing data suggest that forensic laboratories are underfunded and understaffed, which contributes to case backlogs and makes it hard for laboratories to do as much as they could to inform investigations and avoid errors, the report says. Additional resources will be necessary to create a high-quality, self-correcting forensic science system.

EVIDENCE BASE OFTEN SPARSE, VARIES AMONG DISCIPLINES

Nuclear DNA analysis has been subjected to more scrutiny than any other forensic discipline, with extensive experimentation and validation performed prior to its use in investigations. This is not the case with most other forensic science methods, which have evolved piecemeal in response to law enforcement needs, and which have never been strongly supported by federal research or closely scrutinized by the scientific community.

As a result, there has been little rigorous research to investigate how accurately and reliably many forensic science disciplines can do what they purport to be able to do. In terms of a scientific basis, the disciplines based on biological or chemical analysis, such as toxicology and fiber analysis, generally hold an edge over fields based on subjective interpretation by experts, such as fingerprint and toolmark analysis. And there are variations within the latter group; for example, there is more available research and protocols for fingerprint analysis than for bite marks.

Nuclear DNA analysis enjoys a pre-eminent position not only because the chances of a false positive are minuscule, but also because the likelihood of such errors is quantifiable, the report notes. Studies have been conducted on the amount of genetic variation among individuals, so an examiner can state in numerical terms the chances that a declared match is wrong. In contrast, for many other forensic disciplines -- such as fingerprint and toolmark analysis -- no studies have been conducted of large populations to determine how many sources might share the same or similar features. For every forensic science method, results should indicate the level of uncertainty in the measurements made, and studies should be conducted that enable these values to be estimated, the report says.

There is some evidence that fingerprints are unique to each person, and it is plausible that careful analysis could accurately discern whether two prints have a common source, the report says. However, claims that these analyses have zero-error rates are not plausible; uniqueness does not guarantee that two individuals' prints are always sufficiently different that they could not be confused, for example. Studies should accumulate data on how much a person's fingerprints vary from impression to impression, as well as the degree to which fingerprints vary across a population. With this kind of research, examiners could begin to attach confidence limits to conclusions about whether a print is linked to a particular person.

Disciplines that are too imprecise to identify an individual may still be able to provide accurate and useful information to help narrow the pool of possible suspects, weapons, or other sources, the report says. For example, the committee found no evidence that microscopic hair analysis can reliably associate a hair with a specific individual, but noted that the technique may provide information that either includes or excludes a subpopulation.

In addition to investigating the limits of the techniques themselves, studies should also examine sources and rates of human error, the report says. As part of this effort, more research should be done on "contextual bias," which occurs when the results of forensic analysis are influenced by an examiner's knowledge about the suspect's background or an investigator's knowledge of a case. One study found that fingerprint examiners did not always agree even with their own past conclusions when the same evidence was presented in a different context.

COURT TESTIMONY SHOULD BE GROUNDED IN SCIENCE, ACKNOWLEDGE UNCERTAINTIES

The committee was not asked to determine whether analysis from particular forensic science methods should be admissible in court, and did not do so. However, it concluded that the courts cannot cure the ills of the forensic science community. "The partisan adversarial system used in the courts to determine the admissibility of forensic science evidence is often inadequate to the task," said Edwards. "And because the judicial system embodies a case-by-case adjudicatory approach, the courts are not well-suited to address the systemic problems in many of the forensic science disciplines."

The committee also concluded that two criteria should guide the law's admission of and reliance upon forensic evidence in criminal trials: the extent to which the forensic science discipline is founded on a reliable scientific methodology that lets it accurately analyze evidence and report findings; and the extent to which the discipline relies on human interpretation that could be tainted by error, bias, or the absence of sound procedures and performance standards.

The report points out the critical need to standardize and clarify the terms used by forensic science experts who testify in court about the results of investigations. The words commonly used -- such as "match," "consistent with," and "cannot be excluded as the source of" -- are not well-defined or used consistently, despite the great impact they have on how juries and judges perceive evidence.

In addition, any testimony stemming from forensic science laboratory reports must clearly describe the limits of the analysis; currently, failure to acknowledge uncertainty in findings is common. The simple reality is that interpretation of forensic evidence is not infallible -- quite the contrary, said the committee. Exonerations from DNA testing have shown the potential danger of giving undue weight to evidence and testimony derived from imperfect testing and analysis.

STRONG, INDEPENDENT LEADERSHIP NEEDED

The existing forensic science enterprise lacks the necessary governance structure to move beyond its weaknesses, the report says. The recommended new National Institute of Forensic Science could take on its tasks in a manner that is as objective and free of bias as possible -- one with the authority and resources to implement a fresh agenda designed to address the problems found by the committee. The institute should have a full-time administrator and an advisory board with expertise in research and education, the forensic science disciplines, physical and life sciences, and measurements and standards, among other fields.

The committee carefully considered whether such a governing body could be established within an existing agency, and determined that it could not. There is little doubt that some existing federal entities are too wedded to the current forensic science community, which is deficient in too many respects. And existing agencies have failed to pursue a strong research agenda to confirm the evidentiary reliability of methodologies used in a number of forensic science disciplines.

The report was sponsored by the National Institute of Justice at the request of Congress. The National Academy of Sciences, National Academy of Engineering, Institute of Medicine, and National Research Council make up the National Academies. They are private, nonprofit institutions that provide science, technology, and health policy advice under a congressional charter. The Research Council is the principal operating agency of the National Academy of Sciences and the National Academy of Engineering. A committee roster follows.

Copies of **STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD** are available from the National Academies Press; tel. 202-334-3313 or 1-800-624-6242 or on the Internet at [HTTP://WWW.NAP.EDU](http://www.nap.edu). Reporters may obtain a copy from the Office of News and Public Information (contacts listed above). In addition, a podcast of the public briefing held to release this

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report is available at [HTTP://NATIONAL-ACADEMIES.ORG/PODCAST](http://NATIONAL-ACADEMIES.ORG/PODCAST).

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Committee on Science, Technology, and Law

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LABORATORY REPORT · FORENSIC IDENTITY – STR ANALYSIS

CASE DATA:

Referring Agency: Blaine County Sheriff's Office
Orchid Cellmark Case #: FOR4035A
Referring Agency Case #: 030900016
Agency Contact: Jim J. Thomas
Victim's Name: Alan Johnson
Victim's Name: Diane Johnson
Suspect's Name: Sarah Marie Johnson
Report Date: May 13, 2004



1. Evidence Received

Accession #	Sample Description	Receipt Date Method of Delivery
FOR4035-004	Pink robe	01/29/04 – Hand delivered to Orchid by S. Harkins
FOR4035-005	Pants & shirt – Sarah Johnson	
FOR4035-006	Socks – Sarah Johnson	
FOR4035-007	Carpet from hallway	
FOR4035-008	White sandals	
FOR4035-009	Tissue from left collar area of pink robe	
FOR4035-010	Tissue from right side below right pocket of pink robe	
FOR4035-011	Tissue from lower left side of pink robe	
FOR4035-012	Tissue from left front pocket of pink robe	
FOR4035-013	Tissue from top of sleeve near left shoulder of pink robe	
FOR4035-014	Tissue from inside lower back of pink robe	
FOR4035-015	Tissue from inside left sleeve of pink robe	
FOR4035-016	Tissue and bone from blood pool in bathroom	
FOR4035-017	Tissue from blood pool in bathroom	
FOR4035-018	Two hairs removed from barrel of rifle	
FOR4035-019	Pair of brown leather shoes – Bruno	
FOR4035-020	Hairs removed from Bruno's blue sweater	
FOR4035-021	Cutout from Bruno's pants containing stain	
FOR4035-022	Fibers imbedded in unknown material	
FOR4035-023	.264 Cal. "Winchester" Magnum rifle	03/03/04 – Federal Express

2. Results

Serology:

005 Presumptive testing for blood was negative for the stains on the pants from Sarah Johnson.

019 Presumptive testing for blood was negative for the stains on the right and left brown leather shoes.

DNA:

DNA from the above specimens, except FOR4035-005 (pants & shirt – S. Johnson), FOR4035-008 (white sandals), FOR4035-018 (two hairs removed from barrel of rifle), FOR4035-019 (brown leather shoes), and FOR4035-020 (hairs removed from Bruno's blue sweater), was amplified and typed using PE Applied Biosystems' Profiler Plus and Cofiler Kits. The results are listed in Table 1 and Table 2.

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DNA results were obtained using Short Tandem Repeat analysis. Procedures used in the analysis of this case adhere to the standards adopted by the DNA Advisory Board on DNA analysis methods.

3. Conclusion

Based on these results, Diane Johnson is identified as the donor of the DNA profile obtained from bloodstain #8 from the pink robe, bloodstain #9 from the pink robe, bloodstain #10 from the pink robe, bloodstain #11 from the pink robe, bloodstain #14 from the pink robe, bloodstain #15 from the pink robe, bloodstain #16 from the pink robe, bloodstain #17 from the pink robe, bloodstain #18 from the pink robe, bloodstain #20 from the pink robe, bloodstain #22 from the pink robe, bloodstain #23 from the pink robe, bloodstain #1 from sock A, bloodstain #1 from sock B, the bloodstain from carpet from hallway, the tissue from right side below right pocket of pink robe, the tissue from left front pocket of pink robe, the tissue from top of sleeve near left shoulder of pink robe, the (predominant profile) bloodstain #5 from the pink robe and the (predominant profile) bloodstain #25 from the pink robe.

Alan Johnson is identified as the donor of the DNA profile obtained from the tissue and bone from blood pool in bathroom, the tissue from blood pool in bathroom, bloodstain A from the Winchester rifle, bloodstain E from the Winchester rifle, bloodstain H from the Winchester rifle, the (predominant profile) bloodstain D from the Winchester rifle and the (predominant profile) bloodstain F from the Winchester rifle.

The DNA profiles obtained from bloodstain #1 from the pink robe and bloodstain #3 from the pink robe are mixtures. The major DNA profile is consistent with Diane Johnson, and the minor alleles are consistent with Alan Johnson.

The DNA profile obtained from bloodstain #2 from the pink robe is a mixture of at least three individuals. The major DNA profile is consistent with Sarah Johnson. Diane Johnson, Alan Johnson and an unknown individual cannot be excluded as being potential contributors to this mixture.

The DNA profile obtained from bloodstain #4 from the pink robe is a mixture of at least two individuals. The major DNA profile is consistent with Diane Johnson. Sarah Johnson is included as being a potential contributor to this mixture. Alan Johnson cannot be excluded as being a potential contributor to this mixture.

The DNA profiles obtained from bloodstain #6 from the pink robe and stain #34 from the pink robe are mixtures of at least three individuals. Sarah Johnson, Diane Johnson, and Alan Johnson are included as being potential contributors to this mixture.

The DNA profile obtained from bloodstain #7 from the pink robe is a mixture of at least two individuals. The major DNA profile is consistent with Sarah Johnson. Diane Johnson and Alan Johnson cannot be excluded as being potential contributors to this mixture.

The DNA profiles obtained from bloodstain #12 from the pink robe and bloodstain #19 from the pink robe are mixtures of at least two individuals. The major DNA profile is consistent with Diane Johnson. Sarah Johnson is included as being a potential contributor to this mixture. Alan Johnson cannot be excluded as being a potential contributor to this mixture.

The DNA profile obtained from bloodstain #13 from the pink robe is a mixture of at least two individuals. Diane Johnson and Sarah Johnson are included as being potential contributors to this mixture. Alan Johnson cannot be excluded as being a potential minor contributor to this mixture.

The DNA profile obtained from bloodstain #21 from the pink robe is a mixture of at least two individuals. The major DNA profile is consistent with Diane Johnson. Alan Johnson is included as being a potential contributor to this mixture.

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The DNA profile obtained from stain #31 from the pink robe is a mixture of at least two individuals. The major DNA profile is consistent with Sarah Johnson. Diane Johnson and Alan Johnson cannot be excluded as being potential contributors to this mixture.

The DNA profile obtained from stain #32 from the pink robe is a mixture of at least three individuals. The major DNA profile is consistent with Sarah Johnson. Alan Johnson, Diane Johnson and an unknown individual are included as being potential contributors to this mixture. Diane Johnson cannot be excluded as being a potential contributor to this mixture.

The DNA profile obtained from stain #33 from the pink robe is a mixture of at least three individuals. Sarah Johnson is included as being a potential contributor to this mixture. Diane Johnson and Alan Johnson cannot be excluded as being potential contributors to this mixture.

The DNA profile obtained from bloodstain #35 from the pink robe is a mixture of at least two individuals. The major DNA profile is consistent with Diane Johnson. Sarah Johnson and Alan Johnson are included as being potential contributors to this mixture.

The DNA profile obtained from the tissue from left collar area of pink robe is from an unknown male individual. Alan Johnson and Bruno Santos Dominguez are excluded as potential contributors to this profile.

The DNA profile obtained from bloodstain C from the Winchester rifle is from unknown male individual #2. Alan Johnson and Bruno are excluded as potential contributors to this profile.

Due to an insufficient amount of DNA, no conclusions can be reached concerning bloodstain #24 from the pink robe, the tissue from lower left side of pink robe, the tissue from inside lower back of pink robe, the tissue from inside left sleeve of pink robe, the stain from cutout from Bruno's pants, the fibers imbedded in unknown material, bloodstain B from the Winchester rifle, and bloodstain G from the Winchester rifle.

4. Statistical Analysis

Samples Compared:

4035-004-8 (bloodstain #8 from pink robe)	4035-004-9 (bloodstain #9 from pink robe)
4035-004-10 (bloodstain #10 from pink robe)	4035-004-11 (bloodstain #11 from pink robe)
4035-004-14 (bloodstain #14 from pink robe)	4035-004-15 (bloodstain #15 from pink robe)
4035-004-16 (bloodstain #16 from pink robe)	4035-004-17 (bloodstain #17 from pink robe)
4035-004-18 (bloodstain #18 from pink robe)	4035-004-20 (bloodstain #20 from pink robe)
4035-004-22 (bloodstain #22 from pink robe)	4035-004-23 (bloodstain #23 from pink robe)
4035-006A-1 (bloodstain #1 from sock A)	4035-006B-1 (bloodstain #1 from sock B)
4035-007 (bloodstain from carpet from hallway)	
4035-010 (tissue from right side below right pocket of pink robe)	
4035-012 (tissue from left front pocket of pink robe)	
4035-013 (tissue from top of sleeve near left shoulder of pink robe)	
4035-004-5 (predominant profile – bloodstain #5 from pink robe)	
4035-004-25 (predominant profile – bloodstain #25 from pink robe)	
VM20032402-26 (bloodstain - Diane Johnson)	

The frequency of this thirteen system genetic profile in three North American populations is:

Black	1 in 917 quadrillion
Caucasian	1 in 17.2 quadrillion
Hispanic	1 in 621 quadrillion

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Samples Compared:

4035-016 (tissue and bone from blood pool in bathroom)	4035-017 (tissue from blood pool in bathroom)
4035-023A (bloodstain A from Winchester rifle)	4035-023E (bloodstain E from Winchester rifle)
4035-023H (bloodstain H from Winchester rifle)	
VM20032402-22A (bloodstain – Alan Johnson)	

The frequency of this thirteen system genetic profile in three North American populations is:

Black	1 in 18.7 quintillion
Caucasian	1 in 175 quadrillion
Hispanic	1 in 101 quadrillion

Samples Compared:

4035-023D (predominant profile – bloodstain D from Winchester rifle)
VM20032402-22A (bloodstain – Alan Johnson)

The frequency of this twelve system genetic profile in three North American populations is:

Black	1 in 168 quadrillion
Caucasian	1 in 1.09 quadrillion
Hispanic	1 in 2.21 quadrillion

Samples Compared:

4035-023F (predominant profile – bloodstain F from Winchester rifle)
VM20032402-22A (bloodstain – Alan Johnson)

The frequency of this twelve system genetic profile in three North American populations is:

Black	1 in 345 quadrillion
Caucasian	1 in 5.46 quadrillion
Hispanic	1 in 4.74 quadrillion

Samples Compared:

4035-004-7 (major profile – bloodstain #7 from pink robe)
4035-004-31 (major profile – stain #31 from pink robe)
VM20032402-27A (bloodstain – Sarah Johnson)

The frequency of this thirteen system genetic profile in three North American populations is:

Black	1 in 16 quintillion
Caucasian	1 in 119 quadrillion
Hispanic	1 in 474 quadrillion



5. Disposition of Evidence

All evidence received in this case will be returned to the referring agency.

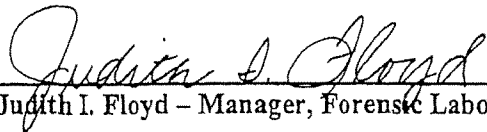
Orchid Cellmark has maintained complete chain of custody documentation from receipt of evidence to disposition.

6. Technical Review

The results and conclusions described in this report have been reviewed by the individuals below.



Amber G. Moss - Supervisor, Forensic Casework



Judith I. Floyd - Manager, Forensic Laboratory

S I G N E D under oath before me this 13th day of May, 2004.



Notary Public

